COOPERATING RAILWAY LABOR ORGANIZATIONS

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April 22, 1969

Mr. C. L. Dennis
Mr. H. C. Crotty
Mr. A. R. Lowry
Mr. C. J. Chamberlain
Mr. R. W. Smith

SUBJECT: Awards Nos. 42 through 48
Disputes Committee
February 7, 1965 Agreement
(Clerks Cases)

Dear Sirs and Brothers:

We met with Referee Rohman on April 18, 1969 to receive his decisions in a number of clerks cases which had been heard by him on April 2, 3 and 4.

I am enclosing herewith a copy of Awards Nos. 42 through 48 which were presented by Mr. Rohman at that time, and, of course, will be binding on all parties.

We believe that Award No. 43 is particularly damaging to us for it modifies the interpretation which was agreed upon on November 24, 1965 and we will file a Dissent to that Award. The Carrier Representatives and Mr. Rohman were so advised and copies will be furnished you when they are completed. The Carriers will file a Dissent with respect to Award No. 44 and a copy of that Dissent will also be furnished to you within the next few days.

Mr. Rohman will meet with us again on June 3, 4, 5 and 6 to hear the balance of this docket of 20 clerks cases. You will be advised as hearings on these disputes progress.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

Enclosures

Award No. 42
Case No. CL-1-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Detroit and Toledo Shore Line Railroad
and
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees

QUESTION AT ISSUE: Is the position of the Carrier correct in the following circumstances:

There is only one seniority district on the Detroit and Toledo Shore Line property as it may apply to employes represented by the Clerks' Organization. It is the position of the Carrier that under such circumstances an implementing agreement is not required under the provisions of Article III of the National Mediation Agreement dated February 7, 1965.

OPINION OF BOARD: In brief, the facts indicate that in contemplation of the installation of certain proposed electronic equipment, the parties negotiated and executed an agreement on August 5, 1964. This agreement provided for the transfer of positions and/or work as well as the inclusion of protective benefits. In addition, in Section 2-allocation, the following paragraph is contained:

"If the General Chairman or his representative is available prior to the date set for the transfer of any position and/or work, the parties hereto shall meet for the purpose of discussing the manner in which and the extent to which employes may be affected by such transfer and the number of employes, if any, who will be permitted to follow such positions and/or work and the bulletining process to be followed."

Thereafter, the Carrier proceeded on May 1, 1965, to institute certain changes at Lang Yard, Toledo, Ohio; and on July 30, 1965, certain changes were made in the Office of Superintendent Car Service.

Furthermore, the August 5, 1964 agreement, on the property, also provided for the merging of the existing four seniority districts into one seniority district.

Subsequently, the parties attempted to resolve the issues created by these changes. In essence, the Organization sought to obtain an agreement which would include the protective provisions of the Washington Job Protection Agreement, the August 5, 1964 Agreement, as well as the National Agreement of February 7, 1965. Upon failure of the parties to agree upon the

protective provisions, the Carrier proceeded to accomplish the various changes without an implementing agreement.

The parties are in accord that the question at issue before us, is whether the Carrier could exercise its right to institute the aforementioned changes without entering into an implementing agreement under Article III, Section 1, of the February 7, 1965 National Agreement, as well as the November 24, 1965 Interpretations.

Inasmuch as the parties are familiar with the provisions of Article III, Section 1, of the February 7, 1965 National Agreement, we shall not repeat the language herein, but will confine ourselves to the November 24, 1965 Interpretations.

However, prior to discussing the Interpretations, we would comment upon Section 2 of the August 5, 1964 Agreement, previously quoted. Our analysis indicates that the section provides for a meeting of the parties to discuss the contemplated changes, provided the General Chairman or his representative is available. While we could romanticize on the word "shall," nevertheless, this section does not include a requirement that the parties enter into an agreement. If such had been contemplated, the parties are sufficiently experienced to recognize the difference between merely meeting and executing an agreement. In the instant situation, the parties were only required to meet -- which they did -- and failed to reach agreement.

The more basic issue, however, is the applicability of the November 24, 1965 Interpretations. Section 1 (a), requires an implementing agreement whenever employees are transferred from one seniority district to another. Hence, this section is inapplicable as there exists only one seniority district on this property.

Section 1 (b), therefore, is determinative of the issue herein and provides as follows:

> "Whenever the proposed change, under the agreement in effect prior to February 7, 1965, would not have been permissible without conference and agreement with representatives of the Organizations."

In our view, the August 5, 1964 agreement did not require an implementing agreement. Hence, it is our conclusion that the Carrier was not obligated to enter into an implementing agreement.

Award:

The answer to the question whether the Carrier was required to enter into an implementing agreement is in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 18, 1969