

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Brotherhood of Railway, Airline and Steamship Clerks,  
TO ) Freight Handlers, Express & Station Employees  
DISPUTE ) and  
Seaboard Coast Line Railroad Company

QUESTIONS (1) Did the Carrier violate the provisions of Article III  
AT ISSUE: of the February 7, 1965 Agreement when, effective with  
January 3, 1978, it transferred positions and employees  
from two separate seniority districts into the Accounting  
Department Seniority District?

(2) Shall Carrier now be required to return the work and  
employees to the seniority district from which transferred,  
where such work and employees shall remain until such time  
as Carrier serves proper notice and enters into an  
implementing agreement to provide for the transfer of work  
and employees in accordance with the provisions of Article  
III of the February 7, 1965 Agreement?

OPINION OF Under date of November 29, 1977, Carrier addressed a  
THE BOARD: letter to the Organization advising of its intent to  
transfer eleven (11) positions to the Accounting  
Department effective January 1, 1978. Nine (9) positions were to be  
transferred from the Purchasing Department; one (1) position from the  
Mechanical Department; and one (1) position from the Engineering  
Department. The Organization properly notified the Carrier that it was  
objecting to the transfer of these positions since it was not given  
proper notice of the transfer. Nevertheless, Carrier proceeded to  
advertise ten (10) of the positions which were to be transferred to the  
Accounting Department Seniority District. Effective January 3, 1978,  
eight (8) employees transferred with their positions to the Accounting  
Department Seniority District. The remaining four (4) employees in the  
Purchasing Department exercised seniority over junior employees in the  
Purchasing Department Seniority District, and, as a result of this,  
four (4) displaced employees transferred from the Purchasing Department  
Seniority District to the Accounting Department Seniority District. In  
sum, eleven (11) positions were transferred across seniority district  
lines effective January 3, 1978.

The Organization concedes that Carrier has the right to  
transfer work and/or employees across seniority district lines,  
provided that it enter into an implementing agreement with the  
Organization as required by Article III of the February 7, 1965  
Agreement. It submits that Carrier failed to enter into an  
implementing agreement, and failed to give it the sixty (60) days

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written notice required by Section 2 of the February 7, 1965 Agreement. The Organization further asserts that Article III of the February 7, 1965 Stabilization Agreement, and the agreed upon interpretation thereto dated November 24, 1965, make it manifestly clear that an implementing agreement is required when the change contemplated by Carrier involves the transfer of employees from one seniority district or roster to another. In the instant case, the Organization avers that employees were transferred from Seniority District No. 13 and Seniority District No. 15 to Seniority District No. 10.

Accordingly, in its opinion, Carrier was required to give it sixty (60) days written advance notice, and was also required to enter into an implementing agreement prior to effecting this transfer across seniority district lines. Inasmuch as the employees were required to transfer to another seniority district without the protection that would otherwise have been afforded them by a proper implementing agreement, the Organization requests that Carrier be instructed to return the work to the Seniority Districts from which it was transferred, and that the employees affected be restored to the status they enjoyed, with full seniority restored on the roster from which they were transferred, until such time as Carrier serves a proper sixty (60) days notice and reaches an implementing agreement as required by Article III of the February 7, 1965 Agreement.

Carrier argues that it was not required to serve notice on the Organization nor was it required to negotiate an implementing agreement with the Organization prior to the transfer in question. Rather, Rules 57 and 58 of the parties' Schedule Agreement allowed Carrier to transfer work and positions from one seniority district to another. Carrier declares that these Schedule Rules were in effect prior to the February 7, 1965 Agreement. Accordingly, Carrier submits that pursuant to interpretation 1(b) of the interpretations dated November 24, 1965, it had the right to effect these transfers without entering into an implementing agreement with the Organization. According to the Carrier, the provisions of the February 7, 1965 Stabilization Agreement were inapplicable to the transfer in question inasmuch as Rule 57 and Rule 58 permitted it to make these transfers across seniority district lines. Consequently, the work was not improperly transferred as asserted by the Organization and no notice or implementing agreement was required. Carrier therefore requests this Board to answer the questions in dispute in the negative.

Prior Awards of this Board have held that a Carrier may transfer work across seniority lines without first negotiating an implementing agreement. (See, for example, Award No. 40; Award No. 43; and Award No. 124). However, where a permanent transfer of employees across seniority lines is contemplated, then this Board has required the parties to negotiate an implementing agreement. (See Award No. 216). It is readily apparent to this Board that when Carrier transferred the eleven (11) positions from Seniority District No. 13 (Purchasing Department) and from Seniority District No. 15 (Mechanical and Engineering Department) to Seniority District No. 10 (Accounting Department) this transfer was intended to be permanent. Moreover, it was not only the work of the eleven (11) positions that was transferred across seniority district lines but the positions and employees themselves who were transferred. Inasmuch as Carrier permanently

transferred employees across seniority district lines, it was required to enter into an implementing agreement with the Organization and to give it the notice mandated by Section 3 of the February 7, 1965 National Agreement.

Carrier claims that the instant dispute is identical to the dispute that was before this Board in Award No. 40. However, a careful reading of that Award convinces this Board that it is factually distinguishable from the claim at hand. In Award No. 40, the Board held that the necessity to enter into an implementing agreement was eliminated inasmuch as Rule 3-E-1 of the effective Agreement between the parties granted the employees affected by the transfer the protection contemplated by the February 7, 1965 Agreement. Rule 3-E-1, however, is clearly distinguishable from Schedule Rules 57 and 58 relied on by the Carrier herein. Rule 3-E-1 allowed employees who were transferred to another seniority district to retain and continue to accumulate seniority in their home seniority district. However, Rule 58 states that an employee transferring to another seniority district shall forfeit all his seniority on the seniority district from which he transferred. Thus, it is obvious that the Schedule Rules involved in Award No. 40 are distinguishable from those cited by the Carrier in the case at bar.

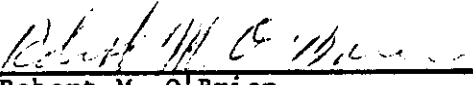
This Board further holds that merely because Rule 57 and Rule 58 allowed those employees whose positions were transferred across seniority district lines to carry their seniority with them, this nonetheless does not obviate the necessity for an implementing agreement. In our view, Article III of the February 7, 1965 Stabilization Agreement clearly and explicitly required the parties to enter into an implementing agreement in those cases such as the one at hand where the Carrier permanently transferred employees across seniority district lines.

Based on the foregoing, it is the considered opinion of this Board that Carrier violated the February 7, 1965 Agreement when, effective January 3, 1978, it transferred positions and employees across seniority district lines without granting the Organization the notice required by Section 2 of that Agreement and without entering into an implementing agreement as required by Section 1 thereof.

AWARD:

Question No. 1 answered in the affirmative.

Question No. 2 answered in the affirmative.

  
Robert M. O'Brien,  
Neutral Member

Dated at Washington, D.C.  
January 15, 1979