Award No. 471

Case No. MW-57-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY

QUESTION AT ISSUE:

1. Were Section Foreman D. E. Cockrell and Trackman L. Schneider entitled to a moving allowance and protection from the loss on the sale of their homes under Article V of the February 7, 1965 Agreement when the Carrier abolished the Miller, South Dakota, section and assigned the section crews duties to the adjoining sections located at Huron and Pierre, South Dakota?

2. Is Assistant Foreman M. M. Mack entitled to moving allowance and protection from the loss on the sale of his residence under Article V of the February 7, 1965 Agreement when he was displaced by J. A. Brand at Aberdeen, South Dakota, on December 14, 1982; differential in rates between a Trackman and an Assistant Foreman; and thirteen (13) days lost wages because of not being able to work in his zone?

3. Is Track Supervisor J. A. Brand entitled to a moving allowance and protection from the loss on the sale of his residence under Article V of the February 7, 1965 Agreement because of Carrier's abolishment of the Track Supervisor's position at Redfield, South Dakota?

4. Are the claims allowable as presented under Rule 21(a) of the August 1, 1974 Agreement and the Interpretations of the February 7, 1965 Agreement since the Carrier failed to give a reason within the time limits for the disallowance of the claims?

OPINION OF THE BOARD:

Claimants D. E. Cockrell and L. Schneider (Section Foreman and Trackman, respectively) were assigned to Miller, South Dakota when, in

December 1982, the Carrier abolished their section. Cockrell displaced to Pierre, South Dakota and Schneider displaced to Huron, South Dakota.

Claimant M. M. Mack, Assistant Foreman, was assigned to Aberdeen, South Dakota until his position was abolished in December 1982. At that time, he displaced to Pierre, South Dakota until he was displaced by J. A. Brand. When that occurred, Mack displaced to Huron, South Dakota.

Claimant J. A. Brand, Track Supervisor, was assigned to Redfield, South Dakota, until his position was abolished in December 1982. At that time, he displaced Claimant Mack at Pierre, South Dakota.

Although each of Claimants displaced to a different section, the system map in the record and the unchallenged assertion of the Carrier indicates that all the various assignment points are within Zone D of Seniority District 6.

Article V of the February 7, 1965 Agreement provides:

> Article V--Moving Expenses and Separation Allowances
>
> In the case of any transfers or rearrangement of forces for which an implementing agreement has been made, any protected employee who has 15 or more years of employment relationship with the carrier and who is requested by the carrier pursuant to said implementing agreement to transfer to a new point of employment requiring him to move his residence shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer or to resign and accept a lump sum separation allowance in accordance with the following provisions:
>
> If the employee elects to transfer to the new point of employment

requiring a change of residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in said provisions and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400) and five working days instead of the "two working days" provided by Section 10(a) of said Agreement.

If the employee elects to resign in lieu of making the requested transfer as aforesaid he shall do so as of the date the transfer would have been made and shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Protective Agreement and Washington Agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under this Agreement shall be in addition to the number of employees who resign to accept the separation allowance herein provided.

Those protected employees who do not have 15 years or more of employment relationship with the carrier and who are required to change their place of residence shall be entitled to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in such provisions and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400) and 5 working days instead of "two working days" provided in Section 10(a) of said Agreement.

Article III of the February 7, 1965 Agreement provides:

The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements.

Article III, Section 1 of the November 24, 1965 Interpretation Agreement provides:

Article III--Implementing Agreements

The parties to the Agreement of February 7, 1965, being not in accord as to the meaning and intent of Article III, Section 1, of that Agreement, have agreed on the following compromise interpretation to govern its application:

1. Implementing agreements will be required in the following situations:

> (a) Whenever the proposed change involves the transfer of employes from one seniority district or roster to another, as such seniority districts or rosters existed on February 7, 1965.
>
> (b) 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.

That part of Item 1(a) which reads

> ...as such seniority districts or rosters existed on February 7, 1965

applies particularly to situations such as those that frequently obtain in collective agreements to which the Brotherhood of Maintenance of Way Employes is a party which provide that seniority is co-extensive with the territorial jurisdiction of a supervisory officer. Under these conditions, if the territory of the designated officer is expanded or contracted it does not have any effect on the seniority of the involved employes. The language above quoted is intended to mean that seniority districts or rosters existing on the effective date of the February 7, 1965 Agreement are not to be changed insofar as the application of the aforesaid agreement is concerned, except as the result of an implementing agreement or other agreement mutually acceptable to the interested parties.

The Letter of Understanding dated April 18, 1974 provides:

During the course of negotiations involving the consolidation of the existing Maintenance of Way Agreements, and particularly the conformation of seniority districts to operating division, question was raised as to the effect of such changes on the protective status of Protected employes under the February 7, 1965 Agreement.

> Specifically, the question relates to the provisions of the February 7, 1965 Agreement and the interpretations thereof which relate to pre-existing seniority districts. As you know, in many cases the pre-existing seniority district is now divided between two, and in some cases three seniority districts. Occasions therefore may exist where an employe cannot work in his pre-existing seniority district solely because it is not a part of his present seniority district.
>
> In order that this problem not arise, I propose we agree that for the purpose of the application of this portion of the February 7, 1965 Agreement we agree to substitute, for the pre-existing seniority districts, the zones as set forth in the new schedule agreement.

The position of the Organization is that Claimants are entitled to protection benefits because the Carrier failed to provide the appropriate, timely explanation for the denial of claims, in violation of Rule 21(a); and Claimants are protected employees, qualified to receive protection benefits, according to Article V. On the timeliness theory, the Organization contends that the Carrier's answers to its claims provided no reasons for the denials. As to the qualification theory, the Organization maintains that the Carrier instituted an operational change which required protected employees to be relocated outside the "30 normal travel route miles" and that such a change does not require an implementing agreement as would otherwise be required by Article III, Section 1. Therefore, the absence of an implementing agreement cannot defeat the employees' claims for protection benefits. Furthermore, the Organization contends that if an implementing agreement is deemed to be required, then the Letter of Understanding dated April 18, 1974, constitutes that agreement; and with the agreement in place, the Organization contends that Claimants are entitled to the protection benefits claimed. The Organization maintains that this Letter substituted zones for the seniority districts, and that fact renders the Letter of

Understanding an implementing agreement.

The position of the Carrier is that Claimants are not entitled to labor protection benefits.

Specifically, the Carrier notes that Article V applies only "in the case of any transfer or rearrangement of forces for which an implementing agreement has been made" and it contends that no implementing agreement was necessary because the transfers or rearrangements of Claimants were not necessitated by "technological, operational or organizational changes." Rather, the Carrier maintains, the transfers of Claimants were made necessary by the abolishment of jobs due to "budgetary constraints." The Carrier cites Award Nos. 6 and 167 of this Board in support of its position, especially as to the conclusion that "ordinary reductions in force due to a fluctuation in business does not fit the definition [of 'operational' or 'organizational']."

The Carrier further maintains that should this Board find that the changes made were technological, operational or organizational, then no implementing agreement was required because the Claimants' moves were all within the same zone of Seniority District 6. As to the agreements of April 18 and May 30, 1974, the Carrier argues that these are limited and deal only with the realignment of seniority districts to conform to the operating districts of the Carrier. Thus, protection benefits apply only to those employees who were affected by the change in seniority districts, and the Carrier cites the decision of an Oregon Short Line committee, chaired by

Neutral Kasher, which resolved this point in the course of a broader decision between it and the Organization in 1982. Finally, the Carrier asserts that its responses to the claims herein were timely and adequate.

After considering the entire record, the Board finds that the instant claims must be denied.

The Board finds that arguments concerning time limit violations in this case have no merit. The finding of this Board in Award No. 318 with respect to time limits is dispositive of the issue.

On the merits, the arguments of the Carrier are persuasive and well founded. There is substantial, credible evidence in the record that all the relocations applicable to Claimants took place within Zone D of Seniority District 6. Article III, Section 1 is clear that an implementing agreement is required only when the relocation or realignment of employees is necessitated by contemplated technological, operational or organizational changes. The credible evidence in the record is that the relocation of Claimants was the product of normal business judgment, what the Carrier termed "budgetary constraints," not those reasons that would require an implementing agreement. Further, the decisions of this Board cited by the Carrier are persuasive and controlling as to whether ordinary reductions in force due to market conditions are actions that require the creation of an implementing agreement; they are not. Since Article V labor protection benefits only apply where an implementing agreement is in effect, they cannot apply to Claimants here.

There is sufficient evidence in the record to indicate that the April 18, 1974 Letter of Understanding is an implementing agreement. That Letter was of limited purpose which did not include the abolishment of Claimants positions.

AWARD

The answer to Questions 1, 2, 3 and 4 is "No."

Nicholas H. Zumas, Neutral Member

Date: 1-4-89