Award No. 124
Case No. CL-17-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE)

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
New York Central Railroad (Eastern District, Boston and Albany Division)

QUESTIONS AT ISSUE:

(1) Did Carrier violate the provisions of the February 7, 1965 National Stabilization Agreement and the interpretations of November 24, 1965 when, on August 6, 1965, it transferred certain work in connection with FLEXI VAN Plan 5, Motor-Rail traffic, arbitrarily and unilaterally from Boston, Massachusetts to the Office of Mr. E. T. Scheper, Auditor of Freight Revenue at Detroit, Michigan, without agreement or notice thereof?

(2) Shall Carrier now be required to serve proper notice to the employes and enter into an Implementing Agreement as provided for and required in the February 7, 1965 National Stabilization Agreement?

OPINION OF BOARD:

In order to spotlight the crux of the instant dispute and to emphasize the importance which both parties attach to the principles involved herein, only a brief review of the facts will be set forth.

On August 6, 1965, the Carrier transferred work in connection with the handling of Flexi-Van rating and billing, from Boston to Detroit. The work amounted to approximately 10 percent of one rate clerk's position and approximately 12 percent of a Cashier Clerk position. Further, the transferred work was assigned in Detroit, to employees covered by the same Organization.

Thus, it is apparent that the Organization is contending that the Carrier violated Article III, Section 1, of the February 7, 1965 National Agreement, as well as the November 24, 1965 Interpretations. The basis for such is the unilateral transfer of work by the Carrier, without an implementing agreement.

It will be recalled that on April 28, 1969, our Board rendered Award No. 43, Case No. CL-9-E, wherein we analyzed the significance of Article III and the compromise Interpretation as stated in 1(a) and (b). In the instant dispute, the Organization now urges that we reconsider the conclusions reached in Award No. 43, and predicated on certain additional information submitted herein, revise our ultimate determination. In this regard, we also call attention

to the Labor Members' Dissent to Award No. 43. In essence, the thrust of the Organization is directed at the compromise Interpretation contained in 1(b), as set forth in the November 24, 1965 Interpretations.

In short, is the Carrier required to enter into an implementing agreement when only a portion of work is transferred from one seniority district to another?

Prior to analyzing the additional material submitted in support of the arguments advanced by both parties, we are herein incorporating by reference Award No. 43 and the Labor Members' Dissent thereto. We would also indicate that we are fully cognizant of the deep feelings and diverse attitudes associated with this problem. This is quite evident from the language contained in the introduction to the compromise interpretation setting forth the meaning and intent of Article III. However, this attitude was spawned and generated during the negotiations which preceded the adoption of Article III, and continued to be displayed in the Interpretations. As a matter of fact, despite the evident clarity of Award No. 43, insofar as this concept is concerned -- transfer of a portion of work across seniority districts--the Organization, nonetheless, vehemently insists that Sections 1(a) and (b) of the Interpretations are distinct and separable statements. Hence, if work is desired to be transferred, an implementing agreement is required.

In support of its argument, the Organization cites a series of Questions and Answers distributed by the Carrier's Vice President of Industrial Relations, dated April 28, 1965. Specifically, Question and Answer No. 11, to wit:

> Is an implementing agreement required under Section 1, Article III, in a case where a position of Cashier under the Clerks' agreement at Marysville, Ohio, is abolished and the work is transfered to Cincinnati, Ohio, employees adversely affected to receive protective benefits under the above agreement?
>
> Answer: In view of the fact that this is an organizational change, an implementing agreement would be required. This is true whether the work was transferred to the same seniority district or to another seniority district in the same craft.

The Carrier, of course, responds that this document was prepared prior to the November 24, 1965 Interpretations and merely illustrates the degree of confusion prevalent among the parties. In an effort to eliminate the existing disparity, the parties continued their discussions as evidenced by further documentation of positions by both the Organizations and Carriers. In this respect, the Organization also cites the following:

> **It is the position of the employees that the required notice by the carrier is necessary and an implementing agreement must be negotiated whenever a carrier proposes any technological, operational, or organizational change, even though there will be no transfer of employees from one seniority district to another . . . .**

The Carrier, in support of its position, cites the following:

> 3. Work may be transferred throughout the carrier's system without the necessity of an implementing agreement . . . .

As a climax to the Carrier's argument that Article III, Section 1, as well as the November 24, 1965 Interpretations, granted it the right to transfer work without an implementing agreement, submits a transcript of the seminar discussion chaired by J. E. Wolfe, at which various Carrier representatives were in attendance on December 2, 1965, approximately one week after the November 24, 1965 Interpretations were adopted. Included therein, is the following explanation:

> Under this interpretation, you can transfer work from one seniority district or roster to another, and you do not need an implementing agreement. If you transfer employees across seniority lines, you do. If there is a transaction involving only a seniority district, for example, the dualization of agencies which you were not permitted to do under the existing collective agreement on the effective date of this agreement, then an implementing agreement is necessary. pp. 25-26.

Further, in response to a question submitted by Mr. Carroll, Erie, Lackawanna, the following colloquy ensued:

> Mr. Carroll: Well, under Article III, Implementing Agreement on page 10, it is my understanding now that our thoughts regarding this prior to your explanation here were such that we could transfer work and transfer from manual to machine contrary to rules that we had in our basic working agreement. And it is my understanding now that even though we don't transfer people and if we want to go from manual to machine, we have to negotiate under our basic agreement. Is this right?
>
> Mr. Wolfe: The answer is this: you may transfer work at your pleasure without implementing agreements. If you automate or go from manual to machine, and you are prevented from doing that under your agreement and it involves the transfer of employees, then you do need an agreement.
>
> Mr. Carroll: Well, that clears that.

In summary, therefore, the Carriers consistently interpreted Article III, Section 1, and the Interpretations thereunder, as granting them the right to transfer work across seniority lines, without the necessity of entering into an implementing agreement. Moreover, the National Agreement does provide protection for those employees who are adversely affected as a result of such transfer of work.

It should be noted, however, though not applicable herein, where there is a dualization of agencies, an implementing agreement is required.

In setting forth the additional arguments of the parties with respect to the question whether an implementing agreement is required when work is transferred, we desired to convey to the parties the high degree of care and utmost deliberation which we devoted to this problem. We have wrestled with the opposing contentions for many hours and have sincerely and conscientiously examined every meaningful facet of the language contained in Article III, as well as the Interpretations and the supporting documents. We have no other means of ascertaining the intent of the parties except by resort to the words contained in the National Agreement, the Interpretations thereto, and the supplemental documents submitted herein. We concede the possibility of error, as well as the lack of a crystal-ball.

In this context, it is our firm view that our conclusions in Award No. 43, are valid and should not be disturbed. Hence, upon a careful reconsideration of the principles set forth in Award No. 43, we adhere to our determination reached therein.

Award

Answer to question (1) and (2) is in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
August 7, 1969

Dissent Follows

Dissent to Award No. 124
Case No. CL-17-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

Dissent of Labor Members

Following the rendition of Award No. 43 we felt it necessary to write a dissent because the decision, in our opinion, nullified a most important part of the agreed upon interpretation of Article III, Section 1, of the February 7, 1965 Agreement.

In an effort to persuade the Referee that his decision in Award No. 43 was erroneous, the Employes submitted the instant dispute in the hope that a further review of the entire matter would convince him that his prior decision was in error.

We recognize, from the detailed opinion, that the Referee seriously considered our objections to his prior award; however, the end result is an affirmation of the prior erroneous decision. While we are appreciative of the time and effort the Referee has devoted to the question of implementing agreements, it is still our opinion that the decisions are wrong and we must add this dissent to that previously filed in connection with Award No. 43.

J. E. Keighley
Labor Member

C. L. Dennis
Labor Member

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August 22, 1969

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

SUBJECT: Special Board of Adjustment #605
Dissent to Award #124 (Clerks)

Dear Sirs and Brothers:

I am attaching hereto a Dissent which we have prepared in connection with Award #124 issued by Referee Rohman under date of August 7, 1969. This Award follows the Dissent we wrote in connection with Award #43 and we wish to maintain our position in connection with both these Awards.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

cc: L. P. Schoene
F. T. Lynch

Enclosure