Award No. 472

Case No. MW-58-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
)
TO THE ) and
)
DISPUTE ) CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY

QUESTION AT ISSUE

1. Were the thirteen (13) employes involved in this dispute entitled to a separation allowance or relocation allowance as provided in Article V of the February 7, 1965 Agreement when the Carrier sold trackage between Rapid City, South Dakota, and Winona, Minnesota?

2. Is the claim allowable as presented under Rule 2(a) of the June 1, 1985 Agreement and the Interpretation of the February 7, 1965 Agreement since the Assistant Vice President-Division Manager J. L. Bradshaw failed to timely notify the Claimants in writing of the reasons for the disallowance of their claims?

OPINION OF BOARD:

On September 4, 1986, the Carrier sold more than 800 miles of railroad to the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). The lines involved were in the Carrier's Zones C and D of Seniority District 6 and Zones B, F, G and H of Seniority District 7.

Coincident with the sale, the Carrier abolished various positions including those of 12 of the 13 Claimants herein. (The 13th, G. Steever, bid into a crane operator's position in February 1986 and never filed a

claim for benefits.)

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, Section 1 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 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 April 18, 1974 Letter of Understanding 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 May 30, 1974 Letter of Understanding provides:

During the course of negotiation of the new Maintenance of Way Agreement you raised the possibility that the conformation of seniority districts to Operating Divisions might result in the elimination and/or relocation of some existing sections, thereby depriving some employes of work and/or necessitating that some employes move or exercise their seniority in a lower class than would otherwise be the case.

I agree that this may exist, particularly at those points common to two seniority districts where the work has not heretofore been consolidated.

> In order to reduce the adverse effect which may occur as a result of such conformation of districts I am willing to agree that if, as a result of such conformation the C&NWT in fact adjusts its sections at common points in a manner which would not have been permissible except for such consolidation and conformation, the C&NWT will provide, to individual employes adversely affected thereby, moving and transfer allowance and loss on sale of home provisions of the February 7, 1965 Agreement.
>
> If as a result of such adjustment of sections, an employe is unable in the normal exercise of seniority in his seniority zone, to retain a position with a rate of pay equal to or exceeding the rate of his previous position, he shall be made whole for any rate differential. However, if he fails to exercise his seniority rights to secure another available position which does not require a change in residence to which he is entitled, and which carries a rate of pay exceeding that of the position which he elects to retain, he shall thereafter be treated for the purpose of this section as occupying the position which he elects to decline. He will not be required to accept positions outside his seniority zone or on division or interdivision gangs.
>
> Any such employe who is deprived of employment (who is unable to continue in service in his seniority zone) shall be protected in rate to be known as a furlough allowance. This furlough allowance will be payable for a period equivalent to the length of service of the employe involved, with a maximum period of 5 years.

The position of the Organization is that Claimants are entitled, according to Article V, to labor protection benefits in the form of separation or relocation payments; and that the Carrier failed to provide an adequate, timely explanation for the denial of claims in violation of Rule 21(a).

As to timeliness, the Organization maintains that the Carrier did not answer its claims until pressed after the expiration of the 60 days prescribed by Rule 21(a).

On the merits, the Organization contends that the April 18, 1974 Letter of Understanding constitutes an implementing agreement thus bringing the

sale and the attendance abolishments within the ambit of Article V. The Organization contends that the April 18 Letter attains the status of an implementing agreement because it relates the pre-1974 seniority districts to the zones created for the purposes of applying the February 7, 1965 Agreement. Thus, the Organization argues, there is an implementing agreement which entitles employees to labor protection benefits if transferred out of their home zone.

The Organization further maintains that the April 18 Letter makes it clear that in order to retain their labor protection benefits an employee is only required to exercise his seniority within his own zone. The Organization also cites the November 24, 1965 Interpretation Agreement in support of its position that the April 18 Letter is an implementing agreement because Article III, Section 1 provides that seniority districts cannot be changed except as the result of an implementing agreement. Since there was a change of seniority districts (i.e., the shift from districts to zones) then, the Organization maintains, the accompanying paper must be an implementing agreement.

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

On the issue of timeliness, the Carrier argues that Awards 104 and 318 of this Board indicate that "claims...which involve an interpretation of the Agreement are not subject to the time limit rules." And since the claims are integrally related to the interpretation of Article V, the Carrier

maintains that the time limit rules do not apply.

On the merits, the Carrier maintains that Article V is not applicable because no implementing agreement was required under the facts relating to Claimants. The Carrier contends that since the allocation or rearrangement of forces which occurred here was not made necessary by contemplated changes of a technological, operational or organizational nature, that an implementing agreement is not required. The Carrier argues that since the sale to the DM&E did not require the transfer of employees to meet work requirements elsewhere, therefore, under the terms of Article III, Section 1, no implementing agreement was required. The Carrier also cites Article III of the November 24, 1965 Interpretation Agreement in support of this position.

The Carrier argues that the Letters of April 18 and May 30, 1974 are not implementing agreements for all transactions but were agreements of limited purpose dealing only with employees who were affected by the change in seniority districts. The Carrier cites the findings of Neutral Kasher in an arbitration between the same two parties here wherein Neutral Kasher observed:

> When this Committee reviews the entirety of the April 18, 1974 Letter of Agreement, it is clear that the purpose and application of this Letter of Agreement was directed only to a portion of the February 7, 1965 Job Stabilization Agreement. It is also clear that the Letter of Agreement of April 18, 1974 spoke to no other subject; particularly, it did not speak in anticipation of track abandonments which would occur seven years subsequent to the 1974 agreement and where there would be protective coverage for employees who were adversely affected in such circumstances.

The Carrier contends that this decision indicates that the 1974 Letters

were never intended to constitute implementing agreements applicable to transactions conceived in 1986.

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 the Board in Award No. 318 with respect to time limits is dispositive of the issue.

With respect to the merits, there is substantial, credible evidence in the record that in order to receive labor protection benefits under Article V, the parties must have entered into an implementing agreement. Further, the requirement of an implementing agreement is only activated when the transfer, rearrangement or realignment of forces is necessitated by a technological, operational or organizational change. However, since the sale of the DM&E did not require the transfer of employees to perform remaining work, no implementing agreement was required under the provisions of Article III, Section 1.

The question then becomes whether the 1974 Letters of Understanding constitute implementing agreements that are applicable here. (Clearly, the mere presence of any implementing agreement is not sufficient, but it must be one that is relevant.) On this issue, the conclusions of Neutral Kasher are sound and persuasive. The 1974 Letters were limited in scope. They deal only with the employees affected by the conversion of seniority

districts into zones. As Neutral Kasher correctly found, "[the April 18, 1974 Letter] did not speak in anticipation of track abandonments which would occur seven years subsequent to the 1974 agreement...." Similarly, those Letters did not speak in anticipation of the Carrier's action here.

In the absence of an implementing agreement, Claimants cannot avail themselves of the Article V labor protection benefits.

AWARD

The answer to Questions 1 and 2 is "No."

Nicholas H. Zumas, Neutral Member

Date: 1-4-89