

BEFORE PUBLIC LAW BOARD NO. 4362

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORFOLK AND WESTERN RAILWAY COMPANY

Case No. 1

Statement of the Issue:

- (1) Employees' Statement of the Question: Does the current agreement provide for changes in prior rights districts?
- (2) Carrier's Statement of the Question: Does Rule 3(e) of the current agreement provide for changes in seniority (prior rights) districts subsequent to December 1, 1983 agreement as did Rule 3(f) [now Rule 3(e)] provide prior to that agreement?

Findings:

This dispute arose from Carrier's April 10, 1987, proposal to merge certain prior rights, or seniority, districts in the Pocahontas Seniority Division of the Eastern Region Seniority District. Rule 3(e) of the current agreement provides:

In case of change in seniority districts, a relative proportion of the total employees affected will be transferred to and their seniority rights adjusted in the revised district, by the management, with a committee representing the employees.

Rule 2(e) of the current agreement specifies that:

Prior rights means the seniority rights of each affected employee by geographical boundary, Group, Class and Grade, as such rights existed under Agreement in effect immediately prior to December 1, 1983.

The Organization objected to Carrier's proposed merger of seniority districts, and the parties filed the instant claim, seeking an interpretation of Rule 3(e) of the current agreement.

The Organization contends that Carrier does not have the right to unilaterally change seniority districts. Moreover, Carrier did not have such a right under the January 1, 1975, Schedule Agreement or any other agreement. The Organization asserts that the December 1983 memorandum of agreement established prior rights seniority based upon

the district geographical boundaries as they then existed.

The Organization also argues that under the clear and unambiguous language of the rules, once an employee establishes seniority on a district roster, the employee retains that seniority so long as there is a collective bargaining agreement between the parties or until the parties agree to change the rules governing seniority; Carrier does not have the authority to unilaterally change the rules. Moreover, Rule 3(f) of the December 1983 agreement, renumbered as Rule 3(e) in the current agreement, sets forth how the parties are to adjust seniority when the seniority districts are changed by agreement. The Organization asserts that Carrier is attempting to unilaterally amend current Rule 3(e) to allow itself the authority to change seniority district, a result never intended by the parties. The Organization points out that if the parties had intended to authorize Carrier to unilaterally change seniority districts, the parties would have included specific language to that effect in the agreement. The Organization further argues that this Board cannot change the language of the rule. The Organization therefore contends that the language of the rule is clear and does not support the Carrier's position.

The Organization then argues that even if the rule is interpreted as Carrier suggests, such an interpretation must be rejected because it conflicts with Rules 2 and 5 of the agreement; if Carrier could unilaterally change seniority districts, then Rules 2 and 5, setting forth the negotiated seniority districts, would be meaningless. The Organization asserts that this Board repeatedly has held that rules are not to be interpreted so as to abrogate other agreement rules. The Organization contends that under the clear language of the rules,

Carrier did not have authority, prior to the December 1983 agreement, to unilaterally change seniority districts, and Carrier does not have that authority now.

The Organization additionally contends that past practice establishes that Carrier does not have such unilateral power. The Organization points out that the language of the rules at issue is nearly identical to language that has appeared in every schedule agreement since December 1921. Moreover, during this entire time period, Carrier has not significantly changed seniority districts and rosters without the concurrence of the Organization; all such changes have been made only by the mutual agreement of the parties, never unilaterally imposed by Carrier. The Organization also argues that during a previous dispute involving reorganization of section territories, Carrier recognized that it does not have authority to unilaterally alter seniority districts.

The Organization further maintains that the language and bargaining history of the December 1983 Memorandum of Agreement establishes that Carrier may not unilaterally change seniority districts. The specific provisions of the December 1983 agreement were intended to guarantee employees the geographical seniority rights that they then enjoyed. The Organization points out that general rules should not be interpreted so as to abrogate more specific provisions; the general Rule 3(f) [now 3(e)] of the schedule agreement therefore should not abrogate the specific rights guaranteed in the December 1983 Memorandum of Agreement. Moreover, under Carrier's proposed interpretation of Rule 3(f), the entire December 1983 agreement would be meaningless; if Carrier can unilaterally alter seniority districts, there would have been no reason to negotiate the

December 1983 agreement. The Organization therefore argues that Carrier's interpretation is not reasonable.

The Organization finally points out that during negotiation of the December 1983 agreement, Carrier's representatives repeatedly stated that employees would retain the territorial seniority rights that they had as of the date of the agreement. The Organization asserts that this establishes the parties' intent, and Carrier's current attempt to unilaterally change seniority districts is not consistent with that intent. The Organization therefore contends that the questions at issue should be answered in the negative.

The Carrier contends that Rule 3(e) governs this dispute and allows Carrier, with the cooperation of the employees, to alter seniority districts to meet work requirements. Carrier contends that prior to December 1, 1983, it had the right to rearrange seniority districts, which are synonymous with prior rights districts. Numerous changes were made in these districts over the years; the employees participated in such changes without any disputes arising. The current agreement contains the same language under which these previous changes were made. Carrier therefore argues that changes in seniority districts are proper. Carrier contends that the rule is intended to allow such changes; the Organization is attempting to change the rule through arbitration, instead of negotiation as provided under the Railway Labor Act.

Carrier further asserts that its decision to rearrange its force because of changed work requirements is an exercise of managerial discretion, and consistent with the express language of the agreement. Carrier points out that it has the right to conduct its business in an

efficient manner; this right continues to exist unless changed through negotiations. Carrier contends that the proposed changes in the seniority districts will ensure that senior employees properly have priority in work assignments, and also so Carrier may efficiently and economically utilize its work force. Carrier argues that that the rule clearly and unambiguously grants it the negotiated right to change the seniority districts when necessary. Moreover, Carrier has exercised this right selectively and only when necessary to ensure efficient operations.

Carrier also asserts that the Organization is attempting to deny Carrier a right granted to it by the agreement. Carrier argues that it had the right to change seniority districts before the December 1983 agreement, and there is no support for the Organization's claim that its right was eliminated in that agreement with the establishment of prior rights districts. Carrier contends that the rule provides that changes in seniority districts can be made; the construction of this rule grants Carrier the unilateral right to make such changes. In addition, Carrier maintains that the rule provides that seniority rights will be adjusted by management with the cooperation of a committee representing the employees. Carrier argues that the Organization ignored the rule when it refused to impanel a committee and attempt to reach an equitable solution. Carrier contends that this refusal constitutes an attempt by the Organization to prevent Carrier from exercising its rights. Carrier finally asserts that Rule 3(e) is included in the current agreement to allow Carrier to change seniority (prior rights) districts. Carrier therefore contends that the questions at issue should be answered in the affirmative.

This Board has reviewed the entire record in this case; and based

upon the provisions of the various agreements, as well as the clear past practices of the parties, the two questions presented to this Board must be answered in the negative. In other words, under the current agreement between the parties, the Carrier may not unilaterally make changes in prior rights or seniority districts.

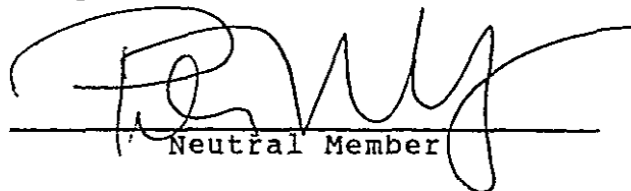
The record makes it clear that the Carrier did not have the right to make unilateral changes in seniority districts after the 1975 collective bargaining agreement. Moreover, during the negotiations that led to the execution of the December 1, 1983, Memorandum of Agreement, the Carrier representative clearly recognized that the Carrier did not have that right and assured the Organization representatives that the resulting agreement in 1983 would not lead to any change in prior rights. The December 1983 agreement certainly contains no language diminishing the prior seniority rights of the employees who began work before December 1, 1983. And, finally, the 1986 agreement, which contains the identical language of the 1975 agreement, albeit in a different section (3(f) became 3(e)), certainly contained no additional right for the Carrier to unilaterally change seniority districts. Therefore, there is no evidence in the record to support the Carrier's contention that it is vested with the right it contends. Hence, the alleged right to unilaterally change the prior rights or seniority districts that the Carrier asserts in its letter dated April 10, 1987, has no basis in the agreements or the past practices of the parties.

This Board agrees with the Organization's argument that the clear intent of Rule 3(e) of the current agreement is that once an employee has established seniority on a particular roadmaster district, that

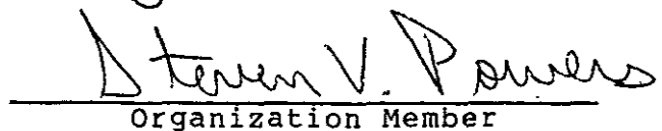
employee retains that seniority for the duration of his employment or until the Carrier and Organization agree to change the current rules.

This Board understands the Carrier's position that it may be more efficient and cost effective to be able to freely and unilaterally move employees or change seniority districts. However, efficiency and cost effectiveness is not the standard upon which this matter is to be judged. In the past, whenever the Carrier desired to make changes relating to the seniority or roadmaster districts, it recognized its obligation to meet and agree with the Organization prior to implementing any of those changes. The Carrier recognized that it was restricted from making unilateral changes by the language of the various agreements between the parties. That language has not changed, and hence the restrictions against unilateral actions on the part of the Carrier are still in effect.

The Carrier does not have the right to make unilateral changes in seniority (prior rights) districts pursuant to 3(e) or any other section in the agreement. The issues before this Board are hereby both answered in the negative.


Neutral Member

Carrier Member


Organization Member

Date: 10/12/87