

NATIONAL MEDIATION
BOARD

APR 24 9 50 AM '90

ADJUSTMENT BOARD

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 978

PROCEDURAL QUESTION

Award No. 1

April 4, 1989

Referee Fred Blackwell

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES AND
CANADA, DIVISION OF TRANSPORTATION COMMUNICATIONS UNION
(BRC)

and

CONSOLIDATED RAIL CORPORATION

TRANSPORTATION WORKERS UNION OF AMERICA (TWU)
Third Party in Interest

OPINION

This Board conducted a pre-hearing conference on a dispute between BRC and Conrail, at the Offices of the National Mediation Board, Washington, D. C. on Friday, November 18, 1988 at which Representatives of all parties hereto, including the Third Party in Interest, were present as follows:

Brotherhood of Railway Carmen:

Mr. James L. Highsaw, Esq.

Mr. Robert T. Horsley

Mr. John L. Steinman

Mr. James E. Allred

Mr. James J. Parry

Consolidated Rail Corporation:

Mr. Robert O'Neill

Transport Workers Union of America:

Mr. Malcolm A. Goldstein, Esq.
Mr. George Leitz
Mr. Amadeo J. Lese

During the pre-hearing conference Conrail presented to the Board a procedural objection to the "Subject Statement" of the Brotherhood of Railway Carmen, which objection was taken under consideration by the Board for study and subsequent determination.

The procedural objection of Conrail is determined by this Procedural Opinion.

NATURE OF PROCEDURAL OBJECTION

The procedural objection of Conrail to the BRC's "Subject Statement" is that the BRC as the listing party of the claims before the Board does not have the unilateral right to redefine the issues to be considered by the Board.

The BRC asserts that the statement of issues in the "Subject Statement" is a proper part of such statement and does not purport to be a statement of the issues that is binding on the other parties herein and the Board.

STATEMENT OF ISSUES TO WHICH CONRAIL OBJECTS

The Statement of Issues to which Conrail's procedural objection is addressed is found at pages 24-25 of the subject statement of the Brotherhood of Railway Carmen, reading as follows:

"The issues raised by these disputes and presented to this Special Board for resolution are framed by the documents referred to above, which are the record of the handling of these disputes on the property. Those issues are:

1. Did the rerouting of rail traffic by Conrail and resulting abolishment of work performed by

BRC-represented carmen and the assignment of that work to other locations constitute an 'assignment, allocation, reassignment, reallocation or consolidation' of work by Conrail within the meaning of Section 706(a) of the Title VII, 1981 amendments to the 3R Act?

The position of BRC is that issue should be answered in the affirmative by the Special Board of Adjustment No. 978.

2. Did the absence of any restriction in the 1977 single agreement covering Conrail carmen employees prohibiting Conrail from transferring carmen work from one location to another location on the Conrail system relieve Conrail, as the Carrier contends, from compliance with the obligations of the last sentence of Section 706(a) of the Title VII, 1981 amendments to the 3R Act requiring the Carrier, prior to any such transfer, to negotiate an agreement providing affected employees the right to follow their work?

The BRC position is that this issue should be answered in the negative by Special Board of Adjustment No. 978.

3. Did the provisions of the 1977 single agreement covering Conrail carmen employees permitting BRC-represented carmen whose jobs were abolished by Conrail, as the Carrier contends, and their work transferred to another location, to bid for jobs within their own seniority district, relieve Conrail of the requirement contained in Section 706(a) of the Title VII 1981 amendments to the 3R Act, requiring the Carrier, prior to the work transfer, to negotiate an agreement providing a right to affected BRC Carmen to follow their work?

The position of BRC is that this issue should be answered in the negative by Special Board of Adjustment No. 978.

4. Did Conrail's 1983 offer to enhance the ability of BRC-represented carmen affected by the Carrier's actions here involved to bid for jobs within their seniority district relieve Conrail, as the Carrier contends, of the requirement of Section 706(a) of the Title VII 1981 amendments to the 3R Act that, prior to the work transfers involved, the Carrier negotiate an agreement providing affected BRC-represented carmen the right to follow their work?

The position of BRC is that this issue should be answered in the negative by the Special Board.

5. If Conrail violated the requirements of Section 706(a) in the situations here involved, what action should the Carrier be required to take to remedy the violation?

The BRC position is that the Board should find that Conrail violated the requirements of Section 706(a) of the NERSA 1981 amendments to the 3R Act by reassigning the work performed by BRC-represented employees at the locations involved without negotiating a prior agreement providing for such employees to follow their work and direct that Conrail should cease and desist from such violations."

CONRAIL'S OBJECTIONS TO BRC'S STATEMENT OF ISSUES

In support of its procedural objection to the BRC Statement of Issues in the "Subject Statement" Conrail submits that such Statement of Issues is contrary to the following part of Section B of the parties' October 25, 1985 Agreement which established this Board, Special Board of Adjustment No. 978:

"Following receipt of such notice of appeal, the parties promptly shall meet to prepare a document which shall contain (1) a subject, which shall be prepared by the party listing the subject so as to set forth specifically the nature of the dispute or controversy, the date or dates involved (if applicable), the name of the employee or employees involved (if any), and the agreement and/or statutory provisions relied upon; and (2) a joint statement of agreed upon facts."

In furtherance of this basic objection Conrail submits the following specific objections:

1. The Agreement establishing SBA No. 978 does not give BRC the right to attempt to fashion the issues to be considered by the Board; that the issues before the Board are the claims filed

and progressed on the property; and that the said Agreement does not allow the party listing a case to recraft the issues to be considered.

2. The BRC's Statement of Issues Nos. 2, 3, and 4 are structured in a manner which "assumes that Conrail had an obligation from which it must show it was relieved" and, further, the BRC issues as stated imply that "Conrail must succeed on each issue to prevail" in the case. However, to the contrary, Conrail will argue that it was not subject to the alleged obligation, and that Conrail's prevailing on any of the arguments will result in denial of BRC's claim.

3. The BRC's Statement of Issues Nos. 2, 3, and 4 also make allegations that Section 706 (a) obligations applied at certain times and in a manner, which is controverted by Conrail.

4. The disputed BRC framing of the issues takes on major importance and should be disregarded, in that it is essential that the issues presented in this case be framed in a neutral and fair manner in light of the statutory requirement that the burden of proof shall be on the Corporation "on all issues" presented under the provisions of Section 714 of NERSA.

5. Conrail also objects to the length and breadth of the Subject Statement in order to preserve any future objection before the Board.

FINDINGS AND DISCUSSION

After due study and consideration of the foregoing, and of all arguments of record presented on the herein procedural ob-

jections, it is concluded and found that the objections of Conrail to the BRC's Statement of Issues in the "Subject Statement" are not persuasive. Accordingly, the Board finds that there is no basis for an Award sustaining Conrail's objection to the said Statement of Issues in the Subject Statement.

The basis of this finding is that while the parties' enabling Agreement clearly authorized the BRC to prepare a Subject Statement on the nature of the controversy, the dates involved, and the names of the employees involved, and the Agreement relied upon, the verbiage used to describe this purpose simply cannot be read as establishing standards which precluded the BRC from including in such Subject Statement the Statement of Issues which are the target of the herein objections by Conrail. Such Statement of Issues does not claim to be binding on the parties or the Board; and even if such claim were made, that consideration would have no relevance in the Board's determination of the confronting dispute.

Each party is free to submit to the Board its version of the issues in the case. The Board will consider same and make the final determination of how the issue(s) in the case shall be stated.

The Neutral is not concerned that he will be mislead or prejudiced by any parties' stated version of such issues.

Accordingly, in view of the foregoing and based on the study of the submitted material as a whole, it is determined that the Carrier's objections should be denied.

AWARD:

The Carrier's procedural objections as described in the Opinion, have been considered and found not supported by the material submitted. Accordingly, Conrail's procedural objections are hereby denied.

BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 978.

A handwritten signature in cursive script that reads "Fred Blackwell". The signature is written in dark ink and is positioned above a horizontal line.

Fred Blackwell

Chairman Neutral/Special Board of Adjustment No. 978

April 4, 1989

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