

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Chicago, Milwaukee, St. Paul and Pacific Railroad Company
TO) and
DISPUTE:) Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

QUESTIONS AT ISSUE: 1. May the Organization refuse to enter into such Implementing Agreement with the Carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces here contemplated?

2. Does the Implementing Agreement proposed by the Carrier fully and adequately meet the provisions of Article III of Mediation Agreement Case No. A-7128 dated February 7, 1965?

OPINION OF BOARD: By letter dated October 6, 1965 the Carrier notified the Organization of its intent to consolidate a number of seniority districts existing wholly or in part in the Minneapolis-St. Paul area into a single seniority district, thereby transferring work and employees from these several districts to a single district. Carrier's notice letter further stated: "There would be no employees directly affected by this change except that it would extend the employment opportunities of all employees involved and permit a better opportunity for the Carrier to provide employment for employees in the Minneapolis-St. Paul area who are protected under provisions of the February 7, 1965 Agreement." Carrier subsequently submitted to the Organization a proposed implementing agreement setting forth the terms and conditions of the intended consolidation. The Organization refused to enter into the proposed implementing agreement.

Article III, Section 1 of the February 7, 1965 Mediation Agreement requires the Organization to 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 of a technological, operational or organizational character. But said Section 1 of Article III does not require the Organization to enter into an implementing agreement the effect of which is to consolidate seniority districts, thereby abolishing seniority districts which existed on February 7, 1965. Such is the effect of the implementing agreement proposed by the Carrier in the subject instance.

Dissent

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AWARD

In accordance with the foregoing Opinion, the Organization may properly refuse to enter into the implementing agreement proposed by the Carrier.

REFEREES:

Lloyd H. Bailer
William H. Chum
David Solnick

Washington, D. C. - December 19, 1967

CARRIER DISSENT TO AWARD NO. 5 - CL-15-W

The Carrier Members dissent from the Neutrals' Award in this case because it so clearly departs from the plain language of the Agreement.

The employee representatives agreed during the Committee's sessions that Article III authorizes the transfer of all work and all employees from one seniority district or roster to another. They drew a distinction between that sort of action and the consolidation of seniority districts or mergers, saying that, while it is permissible to transfer all work and all employees from one seniority district or roster to another, a carrier may not merge or consolidate seniority districts or rosters unless the organizations involved specifically agree to it.

As late as the next-to-the-last day of the adoption sessions, union members of the Committee reaffirmed their earlier statements that Article III authorizes the transfer of all work and all employees from one seniority district or roster to another, and at the time the Neutrals brought in their final Award they made clear their understanding that this Award was not inconsistent with the statements previously made by the representatives of the labor organizations to the effect that it was permissible to transfer all work and all employees from one seniority district or roster to another.

It would have helped to clarify the situation to some degree if the Neutrals had, in their opinion, pointed out the admissions made by the organizations, and the distinction which they drew.

But overriding all of these considerations is the fact that neither the organizations nor the Neutrals have explained their position in the light of the plain language of Article III which gives the carriers the right to make operational and organizational changes, subject only to the requirement that where implementing agreements are necessary to provide for transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated changes, the organizations shall enter into such implementing agreements. The changes proposed by the carrier in this instance were clearly covered by the expression "operational and organizational changes." The agreed-upon Interpretations of November 24, 1965 specified that implementing agreements were required with respect to contemplated changes where it was proposed to transfer employees from one seniority "district" or "roster" to another where a change could not be made prior to February 7, 1965 without an agreement. The carrier recognized that an agreement was required for the merger or consolidation of seniority districts and so notified the organization and proposed an agreement.

During one of the adoption sessions the spokesmen for the organizations stated as a fact that they personally had had a specific understanding with Mr. J. E. Wolfe, the representative of the carriers, during the negotiation of the agreed-upon Interpretations of November 24, 1965, that, under the February 7th Agreement, seniority districts or rosters could not be consolidated or merged unless it was mutually agreeable to all parties. As a result of these allegations, the Neutrals requested additional evidence on this point, and at a special hearing for this purpose, Mr. Wolfe appeared and specifically denied that there was any such understanding. Despite the opportunity afforded by this confrontation, the organizations' spokesmen did not challenge Mr. Wolfe regarding this statement.

It is particularly mystifying to the carrier representatives how the Neutrals could carve out an exception with respect to consolidations or mergers of seniority districts or rosters from the February 7th Agreement when it is recalled that one of the leading spokesmen for the organizations stated at one of the hearing sessions that it was difficult for him to think of anything that did not fall within the expression "technological, operational and organizational changes" as used in Section 1 of Article III.

We believe that the Neutrals have grievously erred in making this Award and, therefore, we record this dissent.

W. S. Macgill

J. W. Oram

Earl Oliver

Carrier Members

January 17, 1968

