Award No. 43
Case No. CL-9-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
and
Penn Central Company (former New York Central Railroad - Southern District)

QUESTIONS AT ISSUE:

1. Did the changes which Carrier made at Bellefontaine, Ohio, effective February 1, 1966, constitute technological, operational and/or organizational changes under the provisions of Article III, of the February 7, 1965 Agreement and Section 1 (b) of Interpretations of November 24, 1965?

2. Did the Carrier violate the provisions of the February 7, 1965 Agreement and the Interpretations thereof, particularly Article III, when it instituted those certain changes at Bellefontaine, Ohio without first negotiating an appropriate implementing agreement?

3. Shall the Carrier now be required to negotiate an appropriate implementing agreement to provide for:

   (a) The changes in work location?

   (b) The transfer and/or use of employes and the allocation or rearrangement of forces?

   (c) The duties and work requirements of positions involved?

   (d) The rates of pay?

   (e) The application of the elections and benefits provided in Article V of the February 7, 1965 Agreement to employees who are required to move their place of residence?

4. Shall the Carrier now be required to return the Cashier's Department work from Cincinnati, Ohio to Bellefontaine, Ohio and retain it there until such time as an appropriate implementing agreement has been reached?

5. Shall the Carrier be required to compensate each and every protected employee involved by the changes instituted at Bellefontaine, Ohio, effective February 1, 1966, for any wage loss or expenses incurred on and after February 1, 1966

and accord each and every such employee the full allowances and benefits prescribed in the February 7, 1965 Agreement?

OPINION
OF BOARD: On May 23, 1962, the parties executed an agreement on the property which provided in Section 2 thereof, that an implementing agreement shall be negotiated before transferring either work or positions from one seniority district to another. Despite said provision, on February 1, 1966, the Carrier instituted a technological change at Bellefontaine, Ohio, by installing a DICC System. This, in effect required the abolishment of the eight clerical positions then in existence at that point and, in lieu thereof, the establishment of eight new positions at that point. In addition, six hours of one cashier's work was transferred to Cincinnati, Ohio, which could now be performed in approximately 40 minutes. Further, the incumbent cashier remained at Bellefontaine and obtained a position paying $2.768 per day higher than her former rate.

Prior to initiating the proposed changes, the Carrier attempted to negotiate an implementing agreement sanctioning these changes. However, the Organization declined to execute such agreement, on the contention that the February 7, 1965 National Agreement provided for an election of options, namely, that the incumbent be permitted the choice whether to transfer with her work to Cincinnati, or resigning and accepting a lump-sum separation allowance.

In passing, we would note that in Case No. CL-1-E, Award No. 42, we held that an implementing agreement was not required due to the fact that the agreement on the property merely provided for a meeting of the parties. In the instant dispute, however, the 1962 agreement specifically obligated the parties to execute an implementing agreement.

In this context, did the February 7, 1965 National Agreement reinforce the obligation of the Carrier to enter into an implementing agreement or supplant it? Again, in issue herein is the compromise Interpretation of November 24, 1965, Section 1 (b), Article III. In analyzing this Interpretation, we find in the statement preceding Section 1, an expression that the parties have agreed on a compromise interpretation. Following said statement is Section 1, which provides for an implementing agreement 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.

Admittedly, under Section 1 (a), an implementing agreement would now be necessary if employees were required to transfer across seniority districts or craft lines. Therefore, the crux of this dispute hinges on the question whether the Carrier could transfer work from one point to another without an implementing agreement, though such was required on the property prior to the National Agreement.

In our view, Section 1 (a) and (b) of the November 24, 1965 Interpretations, cannot be interpreted as two separate and distinct entities. Rather, they fit together more harmoniously if we compare (a) and (b) to both halves of a pair of cutting shears. The intent of the parties, as garnered by the language therein, was to provide a guideline for interpreting Section 1 of Article III. In consideration of the protective benefits, Carriers were now granted the right to transfer work and/or employees throughout the system, provided craft lines were not crossed. Why then muddle the issue further by a compromise interpretation?

Hence, it was the intent of the parties to clarify what may have been ambiguous in said section. Thus, transferring employees across seniority districts would now require an implementing agreement. Why did the parties not see fit to include a requirement for an implementing agreement when only work was tranferred, even though such is included in Article III, Section 1? Again, because of the protective benefits provided the affected employees, as well as permitting those employees to exercise their seniority in conformity with existing seniority rules, as specified in Section 2 of Article III of the November 24, 1965 Interpretations.

In summary, the following principles would appear to be applicable herein. Where no provision for an implementing agreement was originally required on the property, the Carrier is not obligated to enter into such an implementing agreement for transfer of work. Where prior to February 7, 1965, an agreement on the property provided for the execution of an implementing agreement in the transfer of work, the Carrier will be permitted to carry out such transfer of work, without an implementing agreement. However, it is recognized that employees who are adversely affected as a result of such transfer of work would receive the protection they are entitled to under the provisions of the February 7, 1965 National Agreement.

It is, therefore, our considered opinion that under the circumstances prevalent herein, as well as the previous decisions rendered by Special Board of Adjustment No. 605 in Award Nos. 3 and 40, the Carrier was not obligated to execute an implementing agreement.

Award:

Answer to question 1 is in the affirmative and answer to questions 2, 3, 4 and 5 is in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 28, 1969

Dissent

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May 23, 1969

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

SUBJECT: Employees Dissent to Award No. 43
(Case No. CL-9-E
Carrier's Dissent to Award No. 44
(Case No. CL-5-E)
Disputes Committee, February 7, 1965 Agreement

Dear Sirs and Brothers:

I am enclosing herewith our Dissent to Award No. 43 (Case No. CL-9-E) of Special Board of Adjustment No. 605 established by the February 7, 1965 Agreement which was signed by Referee Rohman on April 28, 1969. We believe that this Award is contrary to the Agreement and Interpretations thereunder and the Dissent is necessary to maintain our position.

I am also enclosing herewith the Dissent to the Carrier members in connection with Award No. 44 (Case No. CL-5-E) of this same board which was signed on the same date.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

Attachments

cc: L. P. Schoene

Dissent to Award No. 43
Case No. CL-9-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

Dissent of Labor Members

This case, like a number of others that have come before the Committee, involves the interpretation and application of Article III, Section 1 of the February 7, 1965 Agreement. It is futile to try to determine the intent of the parties from the orginal text. The unions understood the section to require an implementing agreement in all cases of technological, operational or organizational changes to govern the transfer (if any) and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. The carriers, however, insisted that an agreement was "necessary" only if employees were to be transferred across seniority district lines.

Because the divergence of view between the parties as to the intent expressed in the Agreement was so sharp, the parties frankly recognized the irreconcilability of the difference. Accordingly, in the Interpretations of November 24, 1965, they introduced their discussion of this section with the announcement that not being in accord as to the meaning and intent of the original text, they had agreed on a compromise to govern its application; the compromise was patently a substitute.

In the substitute the carrier's original view predominantly prevailed. Paragraph 1(a) expresses the extent of the requirement for implementing agreements as originally urged by the carriers.

However, paragraph 1(b) did express inclusion in the requirement of any other situation in which prior to February 7, 1965,, conference and agreement with the organization was necessary. This can hardly be described as a gain for the employees. It only said that they hadn't given up any preexisting right to have a voice in the disposition of their people through technological, operational and organizational changes.

Nevertheless, the Referee now says, at least for purposes of this case, that the organization did give up the preexisting right to have an implementing agreement when work is to be transferred from one seniority district to another. This is a direct contradiction of paragraph 1(b) of the Interpretations.

We confess that we have difficulty understanding even what the reasoning process is by which this result is achieved. A part of it apparently involves an attempt to interpret the original Article III, Section 1 without regard to the Interpretations.

If this were permissible, of course, the Referee could simply adopt the carrier interpretation of the original text. There is some reason to suppose that this is the essence of what he has done, since he asks "Why then muddle the issue further by a compromise interpretation?"

On the other hand, the Referee does seem to recognize an obligation to take account of the Interpretations. He tells us that Section 1(a) and (b) "cannot be interpreted as two separate and distinct entities." Why not? They certainly purport to set forth two separate and distinct tests for requiring an implementing agreement even though admittedly there would be a considerable overlap. Subparagraph (a) requires an agreement whenever employees are transferred from one seniority district or roster to another regardless of what preexisting unilateral authority the carrier may have had to make such transfers in certain situations. Subparagraph (b) says that regardless of whether employees or work or anything else is transferred and regardless of seniority lines, an implementing agreement is required when the proposed change would not have been permissible prior to February 7, 1965 without conference and agreement with the organization.

In many situations, each subparagraph would require an agreement even if the other were not there. But this does not warrant the statement: "Rather, they fit together more harmoniously if we compare (a) and (b) to both halves of a pair of cutting shears." We cannot escape the suspicion that the comparison to cutting shears came to mind because the Referee, perhaps subconsciously, wanted to cut subparagraph (b) out of the Interpretations in order to reach the results he was determined to reach.

C. L. Dennis
Labor Member

G. E. Leighty
Labor Member