NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1

Award No. 24237
Docket No. 43883
93-1-92-1-I-1343

The First Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Illinois Central Railroad
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(Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM:

"Is it a violation of any agreement rule for the Carrier to require engineers to work as such when a vacancy exists within their seniority district?"

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This is a dispute about the assignment of engineers within consolidated Seniority District No. 5. The Carrier, while having a sufficient number of engineers on Seniority District No. 5, had an excessive number of guaranteed extra board positions at Grenada, Mississippi. However, the number of guaranteed engineer extra board positions at Memphis, Tennessee was insufficient to meet its needs. To rectify this situation, the Carrier in May 1992 reduced the Grenada, Mississippi, Engineers' Guaranteed Extra Board and required the engineers to exercise their consolidated district engineers' seniority at Memphis, as the need occurred.

The Organization contends that the engineers cut from the Grenada Board had prior rights at that location and that the Carrier could not force an assignment of the engineers to the Engineers' Guaranteed Extra Board at Memphis. In advancing its position, the Organization relies upon the provisions of Article II, Section 1 (c)(1) of the May 30, 1973 Merger Protective and Implementing Agreement. It basically contends that the positions

must be bulletined for seniority choice. While the Organization readily acknowledges that the Carrier has a right to require engineers to work as engineers when vacancies exist within their seniority district, it submits that there is one exception provided by Article II, Section 1 (c)(3) Note of the Implementing Agreement No. 1. That Section in pertinent part reads:

> "(c) When all engineers in a given zone are in the ranks of engineer, permanent vacancies or positions on the extra board in that zone will be filled in the following order:
>
> (1) By the senior applicant on the consolidated district in which the position is located after such position has been bulletined throughout that district.
>
> (2) At the option of the company, the position will be bulletined to protected engineers in those zones where in the company's opinion there is a surplus of protected engine service employees with the understanding that the benefits of Sections 5 and 6 of the Merger Protective Agreement will be applicable. The position will be awarded to the senior protected engineer applicant under age 56 in those zones. Engineers transferring to another zone under this provision must remain in that zone for not less than five years.
>
> (3) If the position is not filled in accordance with the foregoing steps, it will be filled by the junior engineer not working as such in the zone which has such employees and whose source of supply location is nearer the location of the vacancy than any other zone that has engineers not working as such.
>
> NOTE: It is understood that an engineer who is working in a lesser capacity in a zone in which he holds

> prior rights will not be considered the junior engineer standing to be forced to another zone under this provision."

In summary, the Organization asserts that the Carrier erred because it did not bulletin the positions; because it did not allow the engineers to exercise their seniority as firemen at Grenada and because it forced the prior rights engineers off their prior rights territory to Memphis. Stated differently, as long as there were non-prior rights engineers available on the Consolidated District, an engineer with prior rights seniority could not be forced off his prior rights territory.

The Carrier, without prejudice to its position that the Organization bears the burden of proof in this case, contends that the Agreement supports its actions.

Fundamental to the Carrier's position in this dispute is its contention that Article XIII of the October 31, 1985 UTU National Agreement and Article XII of the May 19, 1986 BLE Arbitrated Agreement supersedes the Note to Article II, Section 1(c) of the May 20, 1973 Implementing Agreement No. 1 that the Organization has relied upon.

It points out that in anticipation of misunderstanding to the various provisions of the Implementing Agreement, various Questions and Answers were agreed to by the parties. Particularly pertinent to the issue at hand is the following:

> "45. Q. May a demoted engineer be force assigned under Section 1(c)(3) to a position in another zone in which he does not have prior rights.
>
> A. Yes, provided he is <u>not working</u> in a zone 'in which he holds prior rights.'" (Emphasis added)

Likewise, the Parties' Side Letter #20 that addresses the regulations of Engineers' Guaranteed Extra Boards reads as follows:

> "The Carrier will regulate the number of employees, if any, assigned and will have the right to discontine such boards."

With respect to the 1985 UTU National Agreement, the Carrier submits that the following provisions are applicable to the instant case:

> "Article XIII - Firemen:
>
> > The craft or class of firemen (helpers) shall be eliminated through attrition except to the extent necessary to provide the source of supply for engineers and for designated passenger firemen, hostler and hostler helper positions. Trainmen shall become the source of supply for these positions as hereinafter provided."
>
> "Section 1 - Amendments to Firemen Manning Agreement of July 19, 1972
>
> * * * * * * * * * * * *
>
> (6) Change Article III, Section 1 to read as follows:
>
> > 'Section 1 - Firemen (helpers) whose seniority as such was established prior to November 1, 1985 shall have the right to exercise their seniority on assignements which, under the National Diesel Agreement of 1950 (as in effect on January 24, 1964), the use of firemen (helpers) would have been required, and on available hostler and hostler helper assignments subject to the folowing exceptions:
> >
> > * * * * * * * * * * * *
> >
> > (d) When required to fill engineer vacancies or assignments.'" (Emphasis added.)

The Carrier illustrates and explains its application of the Agreement to assign the excess Engineers from Grenada to Memphis as follows:

> "(1) The Carrier provides additional positions to the Memphis guaranteed extra board, as pro-

vided in Side Letter #20 noted above. The additional positions are then bulletined in accordance with Section 2(c) of Implementing Agreement No. 1.

(2) After the bulletins have expired, the Carrier would abolish a like number of positions on the Grenada guaranteed extra board, also as provided in Side Letter #20. The Carrier notes here that this action creates engineers 'not working as such' under Section 2(c)(3) of the Implementing Agreement No. 1. Those engineers were then subject to be force assigned.

(3) The Carrier would not permit excess engineers to exercise their seniority as firemen because engineer vacancies exist within their seniority district. This action, the Carrier asserts, is in accordance with Article XIII of the 1985 UTU National Agreement. Because the demoted engineer is unable to exercise seniority to a fireman's vacancy, he does not come under the provisions of the 'NOTE' to Section 2(c)(3) of the Implementing Agreement No. 1 because he is not 'an engineer who is working in a lesser capacity.'

(4) The demoted engineer is forced to the Memphis guaranteed extra board in accordance with Question and Answer 45, which provides that a 'demoted engineer may be forced to a position in a zone in which he does not have prior rights as long as he is not working in a zone in which he holds prior rights.' His inability to exercise seniority to a firemen's job under three above puts him in a position of 'not working'" (emphasis added).

With respect to the Organization's contention that the 1985 UTU National Agreement is not applicable to the Engineer Craft, the Carrier has advanced a number of points. First, it notes that the 1985 UTU National Agreement Joint Interpretation Committee addressed the key question of: "To what extent does Article XIII eliminate the firemen (helper) craft or class?" That body adopted the conclusions of Presidential Emergency Board No. 208 when it stated:

"It is this Board's conclusion that locomotive firemen should be eliminated without further delay subject to attrition and, where appropriate, other protective benefits... The time has long past for further delays and deliberations regarding the elimination of firemen and we are not persuaded that it is in the interest of the employees and the railroads to refer the question to arbitration.

If a contrary conclusion were reached, the railroads would continue to be saddled with heavy unnecessary costs and their competitive position, as well as the availability of well-paying jobs, would materially suffer. The retention of firemen is not compatible with a modern efficient railroad system.

In view of the above facts and findings, this Board recommends the following:

B. RECOMMENDATIONS:

1. The firemen/hostler issue be resolved by the elimination of firemen on a attrition basis, recognition of train service employees as the basis source of supply for new engine service employees, establishment of a voluntary reserve firemen program for employees currently working as firemen or hostlers, elimination of hostler positions where such work can be performed by mechanical forces in conjunction with their current assignments, and the establishing of train service seniority for current firemen and hostlers who presently hold no such seniority.

   We recognize that the above recommendation is general in nature. However, in our view, the parties have considerable expertise in negotiating important details of the

> type or arrangement recommended. Therefore, we leave that task to them.
>
> The recommended protection should convince the affected employees that their future is assured."

The Joint Interpretation Committee also stated, in fact, on page 2 of its Recommendations that:

> "The National Agreement provides the manner in which employees will be eligible for benefits of attrition protection. The protective provisions do not, however, continue or perpetuate the craft or class of firemen (helpers)...." (Emphasis added)

And on page 3 in part it stated that:

> "Application or interpretation of Article XIII in a manner that would...perpetuate the craft or class of firemen...would be contrary to the spirit, letter and intent of the National Agreement and would be inconsistent with the recommendations of Presidential Emergency Board No. 208." (Emphasis added)

The Carrier also points to the last paragraph of Arbitration Board No. 498 dated October 11, 1989:

> "However, having made that analysis, one is convinced beyond a reasonable doubt that the negotiators of the October 31, 1985 Agreement did, in fact, adhere to the basic philosophy of the recommendations of the Presidential Emergency Board 208. Thus, it is axiomatic that those negotiators also intended the October 31, 1985 Agreement would supersede all local understandings whatsoever which would in any manner conflict with their commitment to the total elimination of the craft or class of firemen...." (Emphasis added by the Carrier.)

In summary, the Carrier points out that locomotive firemen have not been needed for years. Presidential Emergency Board No. 208 ("PEB 208") and many other authoratative bodies have urged the elimination of firemen positions and, as found by PEB No. 208: "The retention of firemen is not compatible with a modern efficient railroad system."

We find for the Organization in this matter that the Note under Article II, Section 1(c)(3) of the May 30, 1973 Implementing Agreement has not been superseded by Article XIII of the October 31, 1985 UTU National Agreement or Article XII of the May 19, 1986 BLE Arbitrated Agreement. While we understand the Carrier's position in this matter and its needs to distribute its personnel to meet the continuing changes to the railroad system, its position in this matter runs counter to our construction of the applicable Agreement language as well as the Awards and interpretations that have arisen since the 1985 Agreement.

While it is true that Article XIII of the October 31, 1985 Agreement flows from the recommendations of PEB No. 208 which clearly advanced the notion "that locomotive firemen should be eliminated without further delay..." and that the "...retention of firemen is not compatible with a modern efficient railroad system", that body also embraced a basic concept that the reduction would be "subject to attrition and, where appropriate, other protective benefits...." Likewise, it further stated in its Recommendations that "the firemen/hostler issue be resolved by the elimination of firemen on a attrition basis...." It further recognized that its recommendations were "general in nature" and that it was left to the parties to negotiate the "important details of the type or arrangement recommended."

With respect to the Carrier's position that the Joint Interpretation Committee Findings and Recommendations of May 1, 1989 lend support to its position in this case, we find no language in that document that would negate the rights conveyed by the Note under Article II, Section 1(c)(3) of the May 30, 1973 Implementing Agreement. We reach the same conclusions with respect to the Arbitration Award No. 498 relied upon by the Carrier.

Last, while we are not unmindful of the Carrier's argument that its failure to take action for a significant number of years should not be viewed as past acceptance of the Organization's positions, given the nature of the problem from the Carrier's perspective, its delay does provide some substance to our holding in this matter. In summary, the right provided by the Note to Article II, Section 1(c) of the May 30, 1973 Implementing Agreement has not been superseded by Article XIII of the October 31, 1985 UTU National Agreement.

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A W A R D

Claim disposed in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: Nancy J. Dever - Secretary To The Board

Dated at Chicago, Illinois, this 23rd day of July 1993.