Award No. 4040
Docket No. 3641
2-MKT-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYES:

1. That effective with the calendar year 1959 the Carrier failed to post seniority roster covering the employes holding seniority in the Carmen Craft at Franklin, Missouri.

2. That accordingly the Carrier be ordered to post the seniority rosters for the year 1959 and thereafter.

EMPLOYES' STATEMENT OF FACTS: Franklin, Missouri is a division point of the Missouri-Kansas-Texas Railroad Company, hereinafter referred to as the carrier, located midway between St. Louis, Missouri and Parsons, Kansas.

As far back as 1922 the carrier employed carmen at that point.

On February 10, 1958, the carrier elected to reduce expenses and posted Bulletin #105 to the effect that all carmen positions were abolished effective February 13, 1958 and listed the names of the carmen affected by the reduction notice.

On January 1, 1959, the carrier published seniority roster at Franklin, Missouri, covering machinists, electricians, machinist helpers and boilermaker helpers, each of whom continue to hold seniority rights at that point. In addition, there are seniority rosters published at Franklin, Missouri for the clerks, telegraphers, engineers, firemen, conductors and brakemen. The seniority roster covering Maintenance of Way employes is posted at Boonville, Missouri, which is a distance of 3 miles from Franklin.

The carrier refused to prepare or post the 1959 Seniority Roster covering its laid off carmen and has since then steadfastly refused to adjust this dispute even though it has been handled through all stages required by the agreement, including a final conference.

In Award No. 5695, the Third Division held:

"The burden of proof in this instance falls upon the Organization and **an assertion that the agreement has been violated is not in itself enough to warrant a sustaining award.**" (Emphasis ours)

In Award No. 6359, the Third Division said:

"We must hold that the burden of proof is on the one who asserts the claim. **Mere words that a violation has occurred are not sufficient without positive evidence to substantiate the allegations as made.**" (Emphasis ours)

Award No. 8084 of the Third Division held:

"**It is fundamental that one making a claim must substantiate it.** The claimant must show facts which constitute a violation of his rights. **Broad general statements that the Carrier has diverted signal work covered by the agreement is not specific enough to enable this Board to pass judgment upon the facts and the application of the agreement thereto.**" (Emphasis ours)

The record in this case clearly and conclusively shows that all that has ever been presented to the carrier in support of the employes' position is the uncorroborated allegation of the general chairman that carrier violated Rule 23 of the controlling agreement.

After carrier's unequivocal denial of any violation of Rule 23 at the first stage of the handling on the property the burden was on the organization to produce conclusive documentary evidence to support their position with respect to Rule 23, but all that was ever presented by them was their parrot-like repitition that it was their position that Rule 23 suppored the position of the organization.

Clearly the organization has not sustained the burden of proof which rests upon the party asserting a claim, and the claim should be denied in its entirety.

* * * * *

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kensas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim and grant said railroad companies, and each of them, such other relief to which they may be entitled.

FINDINGS: The Second 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 waived right of appearance at hearing thereon.

Carrier asks that the Division refrain from considering the merits of the instant case because not timely appealed here under Rule 27 (d). The Division declines to dismiss the case because petitioner's notice of intent to appeal constituted the timely institution of proceedings required by said Rule. Carrier's "highest officer" made his final negative decision on the claim March 20, 1959. The notice of intent to appeal was dated December 17, 1959, or within nine months of the earlier date. Accordingly, the merits of the instant claim must be considered.

Carrier, as it had a right to do, closed down its car repair facilities at Franklin on February 13, 1958, abolished all carmen jobs there, and laid off the incumbents thereof. It declined to post a carmen seniority roster as of January 1, 1959, on the ground that "any rights of those persons who were formerly carried on the Car Department seniority roster for Franklin, Missouri, to perform work of the Carmen's craft at Franklin, Missouri, ceased to exist when Franklin Car Department ceased to exist."

Carrier's statement implies that never again would car repair work be performed at Franklin, Missouri. "Never" is a long time. As a matter of fact, according to the factual summary presented in Award 3818, only two or three days after the abolishment of the carmen jobs at Franklin, car repair work was performed there by "outsiders." And that Award upheld the seniority rights of Franklin's "non-existent" carmen to said work.

But suppose that carrier actually never again has car repair work done at Franklin, Missouri? Does it follow then that the carmen formerly employed there have lost all their seniority rights and are not merely furloughed employes but are not employes at all because, as carrier argues, Rule 23 (b) says their seniority can be exercised only at Franklin?

The answer to this question must be "no." The exercise of seniority rights is considered not only in Rule 23. Rule 21, for example, deals with them, as well as with the status of men laid off in reduction of force. Section (f) thereof says in effect that such men are on furlough and have certain seniority preferences in the matter of transfer to other points on carrier's system. Said Section does not distinguish between complete and partial reduction of force.

If the carmen at Franklin retained their seniority rights to perform any car repair work done there and if they retained some seniority preference to transfer to other points, it must follow that the order in which said rights and preferences are to be exercised is best set forth in a seniority list or roster. It must follow further that carrier was obligated to publish such list on January 1, 1959, and thereafter.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.