

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. Carrier fail to grant extra week vacation for 1977.
2. That claimant be paid double time and one-half rate of pay for any vacation not granted during year 1977, and each succeeding year thereafter until claim is settled.
3. Claimant's records be corrected whereas proper vacation be granted in the future.

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 employees 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.

In this dispute, Claimant contends that he was forced to submit a notice of resignation and release of all seniority rights on March 9, 1976 to begin work with the Louisville and Nashville Railroad (L&N) on March 10, 1976. He argues that other employees were not required to waive their seniority when they effectuated similar transfer and his Seaboard Coast Line Railroad (SCL) identification number which was changed when he was entered on the L&N records was again assigned to him when the mechanical operations of the SCL, L&N and AJT were consolidated in December, 1976 pursuant to the provisions of Section 1(c) of the November 11, 1976 Consolidation Agreement. He claims that the aforesaid evidence supports his contention that his seniority accumulation is unbroken by the March, 1976 transfer.

Contrariwise, Carrier contends that he voluntarily resigned from his SCL position, while on a furloughed status and was under the L&N's separate collective bargaining Agreement at that time. It argues that both the SCL and L&N Agreements do not contain provisions governing interroad seniority transfers and thus no specific violation can be cited as relevant to these facts.

Before proceeding to a substantive discussion of the dispute's merits, we must note our concurrence with Claimant's contention that Carrier failed to address the Organization's May 25, 1976 letter asserting that other employees were not required to relinquish seniority rights when they transferred from the SCL to L&N. In fact, a perusal of this letter, marked employee exhibit G in the record shows that the General Chairman noted that one employee named Mr. C. A. Palmer had to forfeit his seniority, while another employee named Mr. D. A. Williams did not have to waive this benefit when hired by the L&N. Except for the notation that they were both hired on July 24, 1974, we have no other evidence as to these particulars.

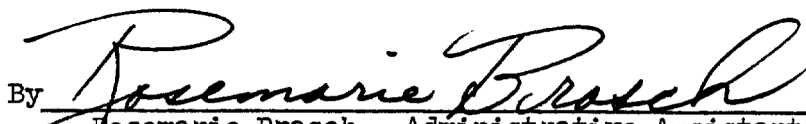
Inasmuch, as we find that Carrier didn't explicitly respond to this letter, we believe that this omission does not negate the primary issue that is before this Division, namely whether specific agreement language or clearly definable practice precluded voluntary waiver. At the time, he accepted the L&N position, he was on furloughed status. He voluntarily resigned his seniority and began by definition to accumulate seniority de novo on March 10, 1976. There is no agreement language in either of the two separate contracts that protected or defined seniority transfers between the SCL and L&N roads and the precedent asserted past practice in the May 25, 1976 letter does not conclusively demonstrate that a consistent seniority transfer policy was observed by L&N officials. It may well be that one person was permitted to transfer his seniority, while another was not in 1974, but we don't have sufficient information relative to these transfers to conclude that a well established past practice existed. There was no specific agreement language that pertained to interroad seniority transfers before the November 11, 1976 Consolidation Agreement and we cannot by interpretation, write such a provision. The fact that he was given the same SCL ID number when the several mechanical operations were consolidated in December, 1976 or the correlative fact that the SCL owned the L&N, does not change the situation in the absence of specific agreement language or compelling evidence of past practice. We do not find an Agreement violation and accordingly, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of June, 1980.