

Award No. 4353

Docket No. 4226

2-CofG-FT-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES
DEPARTMENT, A. F. of L. — C. I. O. (Federated Trades)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement employes named on Bulletin C-58-60 were improperly furloughed on December 14, 1960 and Carman R. A. Smith on December 18, 1960 when they were not given a proper cut off notice.

2. That accordingly the Carrier be ordered to compensate such employes for all wages lost from December 15, 1960 and December 18, 1960 respectively until they are restored to duty.

EMPLOYEES' STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier employed the employes set forth in Bulletin No. C-58-60 and Carman R. A. Smith hereinafter referred to as the claimant.

In Bulletin No. C-58-60, dated December 8, 1960 the carrier stated the following:

"All concerned—Mechanical Department Cedartown: Account continued decline in business and the necessity for affecting economies wherever possible, effective with the close of work day, Wednesday, December 14, 1960, the following positions will be abolished: . . ."

The Claimants as a result of the aforementioned Bulletin No. C-58-60 were not permitted to work after the close of the work day, Wednesday, December 14, 1960.

Carman Smith was not permitted to work after the close of work day, December 18, 1960.

The dispute was handled with carrier officials designated to handle such disputes who all declined to adjust the matter.

The agreement effective September 1, 1949 as subsequently amended is controlling.

“ * * * . Furthermore, the claim must fail for lack of proof. Mere assertions and conclusions are not sufficient to substantiate a claim.”

Third Division Award 8838, Referee Donald F. McMahon:

“ * * * It has consistently been held by this Division that the burden of proof is upon the claimant and the Organization to show beyond a reasonable doubt that the Carrier has violated the agreement.”

Third Division Award 8768, Referee Donald F. McMahon:

“The Board is of the opinion that from a review of the record before us, the facts submitted are not sufficient to support a sustaining Award.”

Third Division Award 8430, Referee Carroll R. Daugherty:

“From a study of the whole record the Board is forced to conclude that the Employes have failed to support their contention. That is, the Carriers decision not to assign Claimant to the new position is not found to have had such an arbitrary, capricious or unreasonable basis as to have constituted a clear abuse of managerial discretion and as to justify this Board now to substitute its own judgment for that of the Carrier. * * * ” (Emphasis ours.)

Also see other awards, including **Third Division Awards** Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 2676, and others. Also see **Second Division Awards** Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others—all of which clearly state that **the burden is on the claimant party to prove an alleged violation of the agreement.** To date, the Employes have produced no evidence of any violation.

In view of all the facts and circumstances shown by the carrier in this Ex Parte Submission, carrier respectfully requests the Board to dismiss this illegal, amended, improperly handled claim; or if it is considered on its so-called merits, to deny the claim in its entirety.

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 were given due notice of hearing thereon.

By bulletin, dated at Columbus, Georgia, December 8, 1960, and addressed to “All concerned—Mechanical Department—Cedarton,” the Carrier stated that, “Account continued decline in business and the necessity for affecting economies wherever possible, effective with the close of work day, Wednesday, December 14, 1960, the following positions will be abolished:” This statement is followed with 4 named Machinists, 3 Carmen, 1 Probationary

Carman, 1 Electrician Helper, and 4 Laborers. The bulletin concluded with the statement, "Those employes affected may exercise their seniority over junior employes on positions where they are qualified and seniority will permit," and was signed by the Carrier's Master Mechanic.

The claim before us is set forth above, and it is to be specifically noted that Carman R. A. Smith named therein was **not** among the employes listed on said bulletin.

Thereafter, on December 10, 1960, the Secretary-Treasurer of System Federation No. 26 (who was, in fact, also the General Chairman of the International Association of Machinists) undertook to initiate a blanket claim on the property on behalf of the employes whose names appeared in the bulletin of December 8, on the ground that said Bulletin did not conform with the requirements of Rule 25 of the Agreement, because it did not list or enumerate the **positions** to be abolished. The Carrier responded (on December 16) that it did not recognize the right of the Secretary-Treasurer of System Federation 26 and General Chairman of the Machinists organization to represent any of the crafts mentioned in the bulletin of December 8, **other than machinists**. Subsequently, on January 10, 1961, the President and Secretary of System Federation 26, and the General Chairman of the Electricians, Boilermakers and Blacksmiths, Laborers, Carmen, Machinists, and Sheet Metal Workers organizations requested the Carrier in writing to entertain a claim on behalf of the 13 employes named in the bulletin. It is to be noted that no boilermakers and blacksmiths and no sheet metal workers were affected by said bulletin; also that the name of the Claimant R. A. Smith was never mentioned on the property prior to April 4, 1961, when the afore-said officers of System Federation 26 and said General Chairmen asked the Carrier by letter that Smith and one H. J. Logan be recognized as claimants.

Out of the complexity of facts briefly summarized above, a number of serious procedural problems arise. Among these we direct particular attention to the following: (1) The right of the Secretary-Treasurer or of the President and Secretary-Treasurer of System Federation 26 to initiate or prosecute claims on behalf of Laborers, Electrical Workers, Carmen, Probationary Carmen, and Machinists, even though it was subsequently disclosed that said Secretary-Treasurer was also the General Chairman of the Machinists organization; (2) The right of the General Chairman of Sheet Metal Workers and the General Chairman of Boilermakers and Blacksmiths to join in the prosecution of said claim on the property; (3) The right of the Employes to amend the claim so as to include the claimant Smith more than 60 days after the claim had been asserted and first handled with the Carrier's proper officer on the property; and the effect of the belated effort to further amend the claim on April 4, 1961, so as to include H. J. Logan, even though his name had appeared on the bulletin of December 8, 1960, and the organizations had contended that such fact was sufficient to identify the claimants involved.

The theory of the Railway Labor Act is that disputes arising out of the contractual rights and obligations of railroad carriers and their employes shall be asserted and progressed by the parties concerned or their duly authorized representatives; that the issues involved in such disputes shall be clearly drawn and defined; that all claims be timely asserted and handled, and that an orderly and good-faith effort shall be made to resolve such disputes on the property, before the jurisdiction of the National Railroad Adjustment Board may be invoked. To this it must be added that when such disputes reach this Board the burden rests on the person or parties that

charge that their rights have been violated to establish the same by a fair preponderance of the proof.

For this Board to undertake to consider this claim on its merits would constitute a precedent for abandoning many procedural rules that have been developed through the years for the orderly discharge of its responsibilities.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4353

In dismissing this claim on the basis of an alleged procedural error the majority failed to consider all the facts presented in the record.

1. With regard to the right of the System Federation to represent the crafts and initiate claims: In answer to the carrier's objection we cite Award 3582 of this Division wherein this carrier filed a case before the Division naming the same System Federation as the defendant.

2. There can be no valid objection to the right of the certified General Chairmen of the interested parties to assist in the handling of a claim.

3. Where improper claimants are named this Board has held that it is a matter to be adjusted on the property from the available carrier records.

We must dissent from these findings.

James B. Zink
E. J. McDermott
T. E. Losey
C. E. Bagwell
R. E. Stenzinger