Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8496
SECOND DIVISION Docket No. 8220-I
2-SPT-I-'80

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

Parties to Dispute: (Clark B. Richins, Bernie L. Stark, Ralph G. Victor, Paul Bennett, Earl F. Dustin, Mike Clem Merrill, Steven R. Hymus
(Southern Pacific Transportation Company

Dispute: Claim of Employes:

This is an action brought by six (6) employees and former employees of the Southern Pacific Transportation Company (Pacific Lines) (hereinafter the "Company") who were members of the Brotherhood Railway Carmen of the United States of America, Systems Federation #114 of that Brotherhood, and Local 635 of the Brotherhood (hereinafter collectively referred to as the "Union"). Plaintiffs allege that they were demoted and then laid off in violation of the Collective Bargaining Agreement, specifically a 1965 Memorandum of Agreement which governed the relative seniority of employees classified as Apprentices and upgraded Apprentices and those employees classified as Helpers and upgraded Helpers.

Plaintiffs were first employed by the Company at various times during the year 1971 as Carmen Apprentices. Subsequently, they were all promoted to the job classification of upgraded Carmen Apprentice. Periodically from 1972 to the present they were demoted and furloughed before those employees with the job classification of upgraded Helper and Helper. Both upgraded Helpers and upgraded Apprentices perform the work of Journeymen Carmen while they are in an upgraded status. After 1,040 days of indentureship, Apprentices obtain the job classification of Journeymen Carmen; Helpers can only count days toward obtaining a Journeymen Carmen date when they are working in an upgraded status. According to a 1965 Memorandum of Agreement between the Company and the Union, Upgraded Helpers should be demoted before Upgraded Apprentices are demoted. This was not the procedure followed by the Company and as a result of this breach of the Agreement, Plaintiffs were demoted and later furloughed and Helpers, who continued to work in an upgraded status, continued to accumulate credit toward their Carmen's date. None of the Plaintiffs were aware of the 1965 Memorandum of Agreement until after the last layoff in 1975. Throughout the period of time in question, Plaintiffs were told by Mr. Joyce Humphreys, Chairman of Local 635 of the Union, that the demotion and layoffs of the Apprentices ahead of the Helpers was the correct application of all Agreements then in effect. In response to inquiries about the furloughs by the Plaintiffs, Humphreys, and other Local Union officials, stated that the Helpers were protected and that any previous Agreements were superceded by the 1968 Reorganization Agreement.

The 1968 Reorganization Agreement governed certain of the terms and conditions of the merger of the Ogden Union Railroad & Depot Company ("OUR & D") and the Southern Pacific ("SP"). The 1968 Agreement essentially merged the seniority rosters of the OUR & D and the SP and labelled all those who were employed by either Company before March 1, 1968 "protected employees". As "protected employees", they could only be furloughed as

defined in that Agreement, at which time they would be compensated during the time of the furlough. The 1968 Agreement in no way modified the terms of the 1965 Memorandum of Agreement and all members of the Union's Joint Protective Board, including General Chairman Harrold Carroll agree that the 1965 Memorandum of Agreement continued in effect after the 1968 Reorganization Agreement.

Finally, in early 1975, Mr. Clark Richins, one of the Plaintiffs, was told by Mr. Claire Toone, a former General Vice President of the Brotherhood, of the continued existence and viability of the 1965 Memorandum. At that time, Richins filed a grievance and pursued appeals through the International Union structure. The grievance was initially denied by the Company and the Union, through Harrold Carroll, who refused to process it any further, asserting that all Helpers had obtained a Carman's date by the time of the last layoff of Mr. Richins and therefore, since there were no more Helpers without Carmen's dates, the 1965 Memorandum of Agreement was of no relevance. The testimony of the Union officials, and the documents produced to date, demonstrate decisively that this was in fact not true and that the responsible Union officials were at least grossly negligent in not adequately investigating the matter and pursuing it.

On or about April 25, 1977, claimants here filed a lawsuit in the United States District Court for the District of Utah, Northern Division (Case No. 77-0038), alleging breach of the collective bargaining agreement by Defendant Railroad and breach of the duty of fair representation on the part of Defendant Union. Extensive discovery was taken on the part of both parties and much of that has been made part of the initial submission.

On September 6, 1978, the District Court Judge granted Defendants' motion for summary judgment, largely on the ground of the failure of Plaintiffs to bring the action before the National Railroad Adjustment Board. That ruling by the District Court Judge is presently on appeal to the Tenth Circuit Court of Appeals.

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.

Based upon a thorough review and analysis of the voluminous record before us, this Board has arrived at the following determinations:

1. The case as presented before us is so procedurally flawed as to cause us to dismiss the claim(s) without a consideration of the merits.

2. In conjunction with point 1 above, we note the claim now before us is at variance with the original claim initiated by Carman Clark Richins and handled on the local property. This variance arises as a result of Claimant Richins' attorney having amended the original claim while being progressed on appeal to the Board, by adding a number of other claimants identified as employees and former employees of the Carrier.

   It is well established principle on all Divisions of the National Railroad Adjustment Board that interjection of new evidence and argument, including the unilateral addition of any number of claimants to cases upon their appeal to the Board, causes the claim to be at substantial variance from that which was handled on the property and clearly in violation of the Railway Labor Act as well as our Tribunal's own Circular No. 1. See for example, Third Division Awards, 11904, 13235, 13333, 13561, 14747, and 14854.

   Thus, the Board lacks jurisdiction to consider these claims and is therefore barred from rendering an Award other than dismissal.

3. Finally, we feel compelled however to state for the record that were it possible for us to consider the merits of this claim, we would still move to dismiss the case based upon the evidence of record which reflects that Mr. Don R. Ward established seniority as a Carman on date of May 19, 1973. This fact, in and of itself is, we feel, dispositive of the entire issue in the original claim and therefore we conclude no contract violation obtained.

For all the foregoing reasons, we find the claim(s) improperly before us and also without merit.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of November, 1980.