

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12972
Docket No. 12925
95-2-94-2-60

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

(Carmen L. E. Repko, J. Gordon, T. Lutton,
(H. R. Larkins, J. M. Bowman and B. F. Regala
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of Employees'

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of J. J. Gordon, T. D. Lutton, H. R. Larkins, J. M. Bowman, L. E. Repko and B. F. Regala, our intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between us and Conrail and the I.B.F.&O. involving the questions:

This is a roster protest of the I.B.F.&O. 1993 Roster, which they and the carrier (Conrail) are freezing the seniority of the above men."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

As Third Party in Interest the International Brotherhood of Fireman and Oilers (I.B.F. & O.) was advised of the pendency of this dispute but chose not to file a Submission with the Board.

By mutual agreement, the Carrier and Organization entered into an amendment to Rule 9(g) which in substance altered the dues maintenance provisions of the Agreement. The October 10, 1991 amendment required employees to pay a dues maintenance fee in order to continue accumulating seniority. The record indicates that both the Carrier and Organization sent letters to all employees holding I.B.F. & O. seniority. The Carrier's letter stated in part that:

"Under Rule 9, paragraph (g)... you have continued to retain and accumulate seniority in classes represented by the IBF&O.

Effective January 1, 1992, this Rule will be changed to provide that any employee promoted to a position in another shop craft prior to April 1, 1976 shall be subject to the maintenance of membership requirements of the IBF&O Union Shop Agreement and required to pay a monthly fee in order to accumulate additional seniority."

The Organization's letter was similar and stated in pertinent part with emphasis:

"... YOU MUST PAY A MONTHLY FEE

FAILURE TO REMIT PAYMENT BEFORE DECEMBER 31, 1991 WILL CAUSE YOUR FIREMEN & OILER SENIORITY TO BE FROZEN EFFECTIVE JANUARY 1, 1992."

The Claimants in this dispute filed protest dated May 3, 1993 arguing that their seniority standing had been altered without understanding or notice. As Carmen and holding IBF&O seniority, they received no notification from either Carrier or Organization about the amended dues maintenance agreement.

The Board has reviewed this Claim with attention to proof of the assertion of non-notification. We find no probative evidence to establish a substantive case. The Carrier has rebutted the Claim with supporting documentation of the mailing list utilized by both the Organization and Carrier in sending the notification letter. The Carrier asserts, without rebuttal that all the Claimants to this dispute were on the mailing list with correct addresses.

The negotiated amendment to the Agreement states that if the fee is not paid, seniority is frozen. This Board lacks any authority to consider the validity of Agreements reached between the Organization and Carrier (Third Division Award 21853). The burden of proof rests with the petitioner to show by sufficient evidence that its Claim is valid. These Claimants were Carmen whose seniority was frozen due to failure to pay a monthly fee for dues maintenance. There is no probative evidence to establish that Claimants were overlooked in notification. The record indicates that nearly five hundred employees were notified, two letters were submitted to each employee, a mailing list was utilized which contained Claimants' correct addresses and there were no other roster protests. The Board denies this Claim for lack of proof.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of November 1995.