

Award No. 5909
Docket No. CLX-5881

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The Agreement governing hours of service and working conditions between the Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at the Burlington, Vermont Agency, July 18, 1948, by failure to remove name of J. H. Farrell from the seniority roster;

(b) His name shall be removed from the seniority roster; and

(c) A. A. George and any other employees who have been adversely affected shall be compensated for all monetary losses sustained retroactive to and including July 18, 1948.

EMPLOYEES' STATEMENT OF FACTS: J. H. Farrell with a seniority date of December 17, 1943 was a regular occupant of position entitled Platformman, Group 12 Position No. 20, at the Burlington, Vermont Agency until July 12, 1948 when he was displaced. There being no junior employee whom he could displace, Farrell automatically became a furloughed employee and continued in that status until July 18, 1948, when through failure to properly protect this status, as required by Rule 19 of the Agreement he forfeited all employment rights with the Carrier.

August 24, 1948 General Chairman G. W. Hurley wrote Agent H. K. Leggett, requesting that Farrell's name be removed from the seniority roster. (Exhibit A).

September 2, 1948 Agent Leggett wrote General Chairman Hurley that the names of employees L. A. Hall, J. H. Farrell and K. M. Lafayette had been removed from the seniority roster. (Exhibit B).

A revised roster was issued effective September 2, 1948 showing the names of J. H. Farrell, L. A. Hall and K. M. Lafayette as being eliminated. (Exhibit C).

September 3, 1948 a protest was made on the removal of K. M. Lafayette from the 1948 roster. (Exhibit D).

Referee Francis J. Robertson held similarly, in Award 5231 of the Third Division, as follows:

"Clearly, seniority is a personal right. It is practically universally recognized as a valuable property right by the courts. It is this keystone upon which many rights of individuals under Collective Agreements are based."

Employee Farrell's seniority, dating from December 17, 1943 is, as held by Referees on Express Board of Adjustment No. 1, the National Railroad Adjustment Board, and the courts, a valuable personal property right and may not be altered or taken from him by action of the Employees under circumstances obtaining in this case.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim made by the District Committee of the Brotherhood that the Carrier violated the Agreement by not removing the name of J. H. Farrell from the seniority roster. It is asked that Farrell's name be removed from the roster and that A. A. George and any other employees who have been adversely affected be compensated for all monetary losses sustained retroactive to and including July 18, 1948.

Employee Lafayette, who was junior in seniority to employee Farrell, was displaced on May 24, 1948. He did not displace a junior employee but worked continuously as a substitute or extra employee from May 24 to July 12, 1948, on which latter date he filed his name and address with the Agent and the General Chairman. This notice was accepted by both the Agent and the General Chairman. The third paragraph of Rule 19 provides that such a filing must be within five days from the date actually reduced to the furloughed list, which in Lafayette's case would have been within five days from May 24, 1948.

Employee Farrell was displaced July 12, 1948, worked continuously as a substitute or extra employee from July 12 to September 9, 1948, on which latter date he filed his name and address with the Agent and the General Chairman.

Another employee, L. A. Hall, who was senior to both Farrell and Lafayette was displaced on July 12, 1948, did not file a notice as required by Rule 19, and subsequently resigned. The circumstances regarding the failure to file notice by Farrell and Lafayette were identical. The Rule was not complied with, in the strict sense, by either employee. The General Chairman requested that the Carrier apply Rule 19 to Farrell, but made no such request regarding Lafayette. The Carrier complied with the demand that Farrell's name be stricken and further, the Carrier, without demand having been made, struck the name of Lafayette. The General Chairman then sought to have Lafayette's name placed back on the seniority roster, but this request was denied by the Superintendent. Upon request made by the General Chairman to the General Manager the name of Lafayette was, on December 13, 1948, restored to the roster. At this same time the name of Farrell was restored, but without request having been made. In restoring both names the General Manager wrote that in so doing it is "our intention to treat all employees alike."

Nothing more was heard from the General Chairman during the entire years of 1949 and 1950. This record contains a copy of a letter, dated January 29, 1951, written by the General Chairman to the General Manager in which reference is made to a letter written by the General Chairman to

the General Manager on December 27, 1948. This referred-to-letter allegedly gave notice of intent to appeal the Lafayette claim to the Express Board of Adjustment No. 1.

The length of time in which it took the Organization to progress this claim for the removal of Farrell's name is not here fatal. Under all the circumstances as appear in the record it seems that the Organization did not act in a dilatory manner to the prejudice of the Carrier. There is no specified or limited time, in this Agreement, to appeal such a dispute to this Board.

Part (c) of this claim was first presented to the Carrier on January 29, 1951. Claimant George was not mentioned by name even then; but that, in itself is not fatal. He was adequately described as "any employe adversely affected." The claim for monetary losses was something entirely new and had not been discussed before. Further, no showing was made that any such losses did occur. The claim for monetary losses were not handled in accordance with the method set forth in the Agreement. To allow part (c) of the claim would clearly be prejudicial to the Carrier's rights in that it would allow monetary losses to accumulate without the Carrier being put on notice that such claims were being made.

The record is clear in pointing out that both Farrell and Lafayette failed to comply with Rule 19. For that reason both names should have been removed from the roster. The rule is clear and unambiguous and was plainly not complied with. In placing the names of Farrell and Lafayette back on the roster the rights of those who appeared as junior in seniority were tampered with. These junior employes had become the possessors of seniority, superior to that of Farrell and Lafayette and were entitled to the protection of the same by both the Management and the Organization.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Part (a) and (b) of claim sustained.

Part (c) of claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of August, 1952.