



Award No. 14410
Docket No. CL-15323

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

GEORGIA & FLORIDA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5653) that:

(1) The Carrier violated and continues to violate the rules of the Special Agreement of June 13, 1963, when it refused and continues to refuse to allow Claimant Simon McClelland, Night Watchman, Douglas, Georgia Shops to avail himself of his option to accept a lump sum settlement under the provisions of that Agreement; and

(2) Simon McClelland, Night Watchman, Douglas, Georgia Shops, shall now be paid the lump sum payment as provided for in said Agreement.

EMPLOYEES' STATEMENT OF FACTS: As result of Finance Docket No. 21974 wherein the Interstate Commerce Commission approved the purchase by the Southern Railway Company (or its assignee) of the Georgia & Florida Railroad, the General Chairman representing all crafts of employees covered by their respective labor organizations' agreements, signed an agreement with President J. P. Belvin of the newly-organized Georgia & Florida Railway Company, which agreement provided for the protective conditions for such employees as were recommended in ICC Finance Docket No. 21974. Copy of this agreement, which is self-explanatory, is hereto attached and identified as Employees' Exhibit No. 1.

Subsequent to the execution of the above-mentioned agreement, the General Chairman held a conference with Director of Personnel E. L. Cartrett, the highest officer designated by the Georgia & Florida Railway Company to handle claims and grievances under our agreement. As result of this conference, understanding was reached therein that the General Chairman would put out a letter outlining the provisions of the Agreement of June 13, 1963, and the purpose of this letter was to give the employees affected their choice of settlements as outlined therein and copy of this form letter was sent to all employees of the old Georgia & Florida Railroad which was reorganized as the Georgia & Florida Railway Company. Copy of this form letter which was returned by Simon McClelland, the Claimant, under date of July 18, 1963, is hereto attached and identified as Employees' Exhibit No. 2. It will be noted that

& Florida Railroad so as to eliminate operating hazards and minimize operating losses as promptly as practicable, and, in this connection, to embargo or restrict the receipt of traffic as he deemed proper in carrying out the directions of the Court.

Subsequently, on June 13, 1963, the Georgia & Florida Railway Company reached an agreement with representatives of operating and non-operating employes as to protective conditions for affected employes of the Georgia & Florida Railroad, copy of which is attached as Carrier's Exhibit A. The Georgia & Florida Railway Company assumed control of that Carrier on July 1, 1963.

THE PRESENT CLAIM

Until April 27, 1963, Claimant Simon McClelland worked the position of Night Watchman at Carrier's Douglas Shop, at Douglas, Georgia. On that date, McClelland was displaced as Night Watchman by a senior employe, E. Z. Holton, whose position as Car Clerk at Douglas was abolished on April 23, 1963 for economy reasons, pursuant to an Order issued that date by the District Court of the United States for the Southern District of Georgia which directed the Receiver of the Georgia & Florida Railroad to take immediate action to bring about the complete liquidation of the Railroad and to reduce service and to embargo or restrict receipt of traffic as necessary to carry out the directions of the Court.

As Claimant McClelland's seniority did not entitle him to any other available position, claim was filed in his behalf for a lump sum settlement allegedly under the provisions of the Agreement of June 13, 1963, based on a contention that "he was a regularly assigned employe on April 18, 1963 and that the Agreement covered all employes who were holding a regular assignment on that date." The request for a lump-sum settlement was declined because the circumstances involved in Mr. McClelland's case were not as stipulated in the June 13, 1963 Agreement, and that Agreement is not even remotely applicable. Subsequently, the claim was progressed by the Brotherhood of Railway and Steamship Clerks in the usual manner, discussed in conference between the parties, and, being entirely without merit, remains declined.

(Exhibits not reproduced.)

OPINION OF BOARD: The present Claim arises out of an Agreement entered into between the employes of the Georgia and Florida Railroad and the Georgia and Florida Railway Company on June 13, 1963. As the preamble of the Agreement recites historical facts leading up to the signing of the Agreement by the parties thereto, the Agreement is reproduced, in part, so far as it is applicable and necessary to a proper consideration of this Claim.

"WHEREAS, in Finance Docket No. 21974, the Interstate Commerce Commission approved the purchase by the Georgia & Florida Railway Company of properties and franchises of the Georgia & Florida Railroad (Alfred W. Jones, Receiver) for ownership, management, and operation, and acquisition of control of said Georgia & Florida Railway Company by Carolina & Northwestern Railway Company, the Live Oak, Perry & Gulf Railroad Company, and the South Georgia Railway Company through stock ownership, approved and authorized pursuant to certain conditions for the protection of em-

ployes 'substantially in the language of the statute,' viz., conditions identical to those set forth in **Chicago & North Western Railway Co. Merger**, 261 ICC 672, and about which the Commission in Finance Docket No. 21974 said 'our action herein shall not be taken as a precedent for the action which we may take in the future under less compelling circumstances'; and

WHEREAS, the United States District Court for the Southern District of Georgia, Augusta Division, has found that 'no feasible plan has been submitted to the Court by any party or interested person for continuing the operation of Georgia & Florida Railroad as an independent Carrier if the properties and assets of said Railroad are not purchased by Southern Railway Company (or its assignee) under its contract of June 27, 1961 with said * * * Receiver * * * as authorized by the Interstate Commerce Commission' and has issued an Order under date of May 17, 1963, requiring the Receiver to proceed 'without delay, to carry out all phases of the work necessary and incidental to the development, preparation and presentation of a plan for the abandonment and liquidation of said Railroad' unless 'the sale as set forth in said contract [of June 27, 1961] and approved by the Interstate Commerce Commission is consummated'; and

WHEREAS, the applicant has said that it cannot afford to consummate said transaction under the terms laid down by the Interstate Commerce Commission unless the method of handling Georgia & Florida Railroad personnel is as hereinafter set forth; and

WHEREAS, the Receiver, pursuant to the Order of May 17, 1963, is proceeding with all practicable speed to prepare and present to the Court a plan of abandonment and liquidation of the Georgia & Florida Railroad; and

WHEREAS, the employees of the Georgia & Florida and their duly authorized representatives are convinced that unless this Agreement is executed, the Georgia & Florida will be abandoned and its assets liquidated and said employees and their said representatives desire to save some of the jobs of Georgia & Florida Railroad employees;

NOW, THEREFORE, in consideration of the mutual covenants [sic] of the parties and other good and valuable consideration, it is agreed as follows:

(1) Effective upon consummation of the transaction, the employees of the Georgia & Florida Railroad, through their duly authorized representatives, hereby accept the employee protective conditions hereinafter set out:

(a) Each regularly assigned employee of Georgia & Florida Railroad as of the effective date of the Order of approval by the Interstate Commerce Commission, who is deprived of his employment as a result of the work being transferred to the Southern Railway Company or any railroad under its control (other than the Georgia & Florida Railway Company), as set out in the Interstate Commerce

Commission's Report and Order, shall be paid each month for a period of 4 years from such effective date (or, if employed by Georgia & Florida Railroad for a lesser period, such lesser period), an allowance equal to his basic monthly wage on the effective date of the Order, less any other earnings received during the period of protection.

(b) Each regularly assigned employee of the Georgia & Florida Railroad as of such effective date who, although retained in his employment, is placed in a worse position with respect to his compensation as a result of the transfer of work to Southern Railway Company or a railroad under its control (other than Georgia & Florida Railway Company), as referred to in (a) above, shall be paid each month for a period of 4 years (or if employed by Georgia & Florida Railroad for a lesser period, such lesser period), an allowance equal to the difference between the monthly wage received by him in the position in which he is retained and the basic monthly wage received by him in the position from which he was displaced.

(c) Any employee of the Georgia & Florida Railroad deprived of employment for the reasons stated in (a) above, may accept, if he desires, a lump sum settlement in lieu of the monthly allowance provided in (a) above.

* * * * *

(2) The Georgia & Florida Railway Company will take over and apply the terms and conditions of all Agreements, including the Wage Agreement, the latter being dated September 24, 1957, that were in effect between the Georgia & Florida Railroad (Alfred W. Jones, Receiver) and employees represented by the signatory Organizations on the effective date of the Order of the ICC in Finance Docket 21974, except to the extent any of those Agreements are hereby modified and superseded by the provisions of this Agreement.

* * * * *

(4) This Agreement shall terminate and be of no further force and effect:

(a) In the event the transaction in said Finance Docket No. 21974 shall not be consummated.

(b) Upon expiration of the protective period.

This Agreement takes precedence over all employee protective conditions imposed by the Interstate Commerce Commission in Finance Docket No. 21974.

Signed at Augusta, Georgia, this 13th day of June, 1963.

Georgia & Florida Railway Company
/s/ J. P. Belvin
President

For the Employees:

* * * * *

/s/ B. H. Clegg
General Chairman,
Brotherhood of Railway &
Steamship Clerks, Freight Handlers,
Express & Station Employees."
(Emphasis ours.)

It appears that the Georgia and Florida Railway Company assumed the control of the Georgia and Florida Railroad on July 1, 1963.

Claimant Simon McClelland was a Night Watchman at the Douglas, Georgia, Shops. A position of Car Clerk was held by one E. Z. Holton at Douglas on April 28, 1963. His position was abolished on that day because the Receiver of the Georgia and Florida Railroad had been ordered to liquidate that Company and in furtherance thereof to reduce its forces. The Company then advised its employees that by virtue of said order it was necessary to furlough approximately twenty-five employees to keep the Railroad running. Employee Holton exercised his seniority and displaced the Claimant as a Night Watchman. Subsequently, Claimant's former position of Night Watchman at Douglas Shops was abolished leaving no position to which his seniority qualified him. Claimant has made a claim for lump settlement under the provisions of the June 13, 1963, Protection Agreement.

It is important to note that Claimant was displaced by a senior employee in full accordance with the terms of the Clerks' Agreement. The present Carrier, Georgia and Florida Railway assumed control of the Georgia and Florida Railroad, the position of Night Watchman at Douglas having been abolished entirely. It was stipulated in part, in the June 13, 1963, Agreement that it should apply to "each regularly assigned employee as of the effective date of the Order . . . who is deprived of his employment as a result of the work being transferred to the Southern Railway Company or any railroad under its control."

The Agreement of June 13, 1963, was intended strictly as a protection for employees deprived of employment as a result of the work being transferred to the Southern Railway or any railroad under its control.

That it was so understood by the employees is evidenced by the following declaration in the Preamble of the June 13, 1963, Agreement:

"WHEREAS, the employees of the Georgia & Florida and their duly authorized representatives are convinced that unless this Agreement is executed, the Georgia & Florida will be abandoned and its assets liquidated and said employees and their said representatives desire to save some of the jobs of Georgia & Florida Railroad employees;"

It is clear from the facts and circumstances of this case that the Claimant was deprived of his employment as Night Watchman at Douglas by virtue of an employee senior to Claimant exercising his seniority under the Clerks' Agreement. That he then became a furloughed employee. The position of Night Watchman was subsequently abolished. It has not been shown that the posi-

tion or work of Night Watchman at Douglas Shops was transferred to the Southern Railway or any of its subsidiaries. The June 13, 1963, Agreement must be literally construed. Claimant does not come within the purview of that Agreement and his Claim must be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement of June 13, 1963, has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.