



Award No. 14412
Docket No. CL-15318

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-5654) 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 E. Z. Holton, Cashier-Utility Clerk, Douglas, Georgia to avail himself of his option to accept a lump sum settlement under the provisions of that Agreement; and

(2) E. Z. Holton, Cashier-Utility Clerk, Douglas, Georgia, 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 Chairmen representing all crafts of employees covered by their respective labor organization's agreement, 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 was 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 E. Z. Holton, the claimant, under date of July 15, 1963 is hereto attached and identified as Employees' Exhibit No. 2. It will be noted that

McClelland. Effective with the assumption by the Georgia & Florida Railway Company of control of the Georgia & Florida Railroad, at 12:01 A.M. on July 1, 1963, shop operations at Douglas Shop were discontinued, and position of Night Watchman at Douglas Shop was abolished. He then claimed the position of Cashier-Utility Clerk at Douglas; however, that job was claimed by and awarded to a senior Clerk, B. Drew, whose job as Chief Clerk to Master Mechanic, Douglas Shop, also had been abolished July 1, 1963.

Claimant Holton then claimed a position of Cashier-Utility Clerk at Vidalia, Georgia, being worked at that time by a junior clerk. Subsequently, Mr. Holton went to Vidalia for the purpose of "looking over the duties," then advised Director of Personnel E. L. Cartrett that "he was convinced he could not handle the job." He withdrew his claim for that position, and on July 23, 1963 requested a lump-sum settlement in accordance with the provisions of the Agreement of June 13, 1963 (Carrier's Exhibit A). Another clerk, R. L. Adams, claimed the position and protected it on August 1, 1963.

Mr. Holton's request for a lump-sum settlement was declined because the circumstances involved removed his case from any possible application of the terms of the Agreement of June 13, 1963. Shortly thereafter, the General Chairman of the Brotherhood of Railway and Steamship Clerks filed claim for lump-sum settlement in behalf of Mr. Holton. The claim was progressed in the usual manner, discussed in conference between the parties, and, being entirely without merit, remains declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant E. Z. Holton was a Car Clerk at the Douglas, Georgia Shops. Due to the abolishment of his position at Douglas, he was forced to exercise his seniority over the position of Night Watchman at the Douglas Shops which he did under date of April 27, 1963. When abolished, the Car Clerks' position at Douglas was not transferred to any other Carrier nor was the Night Watchmans' position transferred to another Carrier which Claimant held when it was abolished on July 1, 1963. He then claimed the position of Cashier-Utility Clerk at Douglas but that job was claimed by and awarded to a Clerk senior to him. He then made claim for the position of Cashier-Utility Clerk at Vidalia, Georgia on July 12, 1963. He then went to Vidalia to look over the job and advised the Director of Personnel that he was convinced he could not handle the position. He then withdrew his claim for that position and on July 23, 1963, he requested a lump sum settlement under the provisions of the June 13, 1963 Agreement between the employees of the Georgia and Florida Railroad and the Georgia and Florida Railway Company. On August 31, 1963, Claimant made the following statement in a communication addressed to the Director of Personnel of the Carrier.

"In view of the fact that I am number 22 on Seniority List as of January 1, 1963 there is and has not been a job that I could actually have claimed and held, it is my position that I am positively entitled to separation pay."

The June 13, 1963, Protection (or separation) Agreement entered into has been discussed in Awards 14410 and 14411, and so much of them as are applicable to the situation presented here are made a part of this Opinion by reference.

By his own statement, heretofore cited, Claimant clearly demonstrates that he has not brought himself within the purview of the June 13, 1963 Agreement. In order for the provisions of that Agreement to become applicable, the employe must have been "deprived of employment" before he can be considered eligible for either a monthly allowance or a lump sum settlement. He is not "deprived of employment" when his job is abolished if he has seniority rights to other positions. One who declines to exercise his seniority simply prefers to be unemployed. Furthermore, had Claimant been deprived of employment as he alleges there is no showing that it was "as a result of the work being transferred to the Southern Railway" as provided for in the June 13, 1963, Agreement.

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

The June 13, 1963 Agreement 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.