



Award No. 17718
Docket No. CL-17262

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6311) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement between the parties when it arbitrarily and unilaterally abrogated the seniority rights of sixty-eight (68) Sacramento General Stores employees; and,

(b) The Southern Pacific Company shall now be required to allow each of such employees eight hours' additional compensation January 2, 1965, and each date thereafter until their seniority rights are restored.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions (hereinafter referred to as the Agreement), between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

Rule 26 of the Agreement provides that seniority begins at the time employee's pay starts on the seniority district and on the roster where service is first performed. Under this rule the following employees:

Jose Alegria	Xavier Guzman	Lendyel Rogers
Howard W. Alford	John G. Hightower	Refugio A. Ruelas
Geo. W. Allison	Raymond J. Holley	Jesse Sanchez
Lorenzo D. Ames	Argos E. Horn	Manuel P. Sanchez
Oliver A. Andrade, Jr.	James C. Hulsey	Guadalupe Sandoval
Mariano Armenta	Luther L. Kizer	William J. Scharf
James E. Atwood	Lynn C. Kofford	Wesley L. Shearrer
Pedro R. Ayala	Jos. D. Lasky	Eliseo N. Solorio
Salvador Bernal	Robt. S. Loots	F. Stanphill
Virgil E. Boone	Jesus C. Lopez	John H. Stanphill
Henry M. Bustillos	Eddie D. Mackey	Ralph R. Sukraw
Manuel J. Cabrera	Orlando J. Marin	Vladimar M. Tkacheff

Subsequently, Carrier's Division Superintendent notified Mr. D. A. Mount, Carrier's General Storekeeper at Sacramento that due to the foregoing circumstances, claimants' names should be removed from the seniority list which that office prepared and issued annually in January. However, at the time that notification was received, the office of the General Storekeeper at Sacramento had already issued and posted seniority roster for the Sacramento General Store, listing employes in seniority date order as of January 1, 1964 and that seniority list included the names and seniority dates of each claimant here involved.

In similar circumstances, it has been Carrier's practice for as long as rosters have been maintained to take note of any typographical or clerical errors discovered on seniority lists subsequent to their issuance and with the preparation of a new seniority list for the following year corrections of such errors are made accordingly. In this instance, when Carrier's General Storekeeper at Sacramento issued and posted seniority roster for the Sacramento General Store, listing employes in seniority date order as of January 1, 1965, the names and seniority dates of the claimants in this case, improperly listed on roster issued January 1, 1964, were not included thereon.

6. By letter dated February 26, 1965 (Carrier's Exhibit "B"), Petitioner's Division Chairman submitted claim to Carrier's General Storekeeper in behalf of claimants for restoration of claimants to the seniority list with all seniority rights unimpaired and claim in their behalf for January 2, 1965 and subsequent dates based on the contention that the names of the 68 claimants involved were improperly removed from the seniority list issued on January 1, 1965. By letter dated May 14, 1965, Carrier's Exhibit "C" (time limits extended by agreement), Carrier's General Storekeeper denied the claim, and by letter dated May 24, 1965 (Carrier's Exhibit "D"), Petitioner's Division Chairman advised that the claim would be appealed.

By letter dated July 6, 1965 (Carrier's Exhibit "E"), Petitioner's General Chairman appealed the claim to Carrier's Supervisor of Stores and by letter dated September 3, 1965 (Carrier's Exhibit "F"), the latter denied the claim. By letter dated October 25, 1965 (Carrier's Exhibit "G"), Petitioner's General Chairman advised that the claim would be appealed.

By letter dated October 25, 1965 (Carrier's Exhibit "H"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated November 23, 1966 (Carrier's Exhibit "I"), the latter denied the claim.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimants were advised by letter on November 8, 1963, to report to the Guaranteed Extra Board not later than November 25, 1963. They failed to so report, a vital fact not denied by either the Claimants or the Organization making the petition on their behalf. Their names, through a clerical error, were included on the 1964 roster, but eliminated on the 1965 roster. The claim now before us was thus submitted by letter dated February 26, 1965.

Carrier poses a number of defenses to this action, but relies principally on the provisions of Article IV, Section 1(d) of the Agreement of March 16, 1963, which in pertinent part reads as follows:

Unassigned employes, except those properly absent under the rules of the working agreement, failing, except for verified unavoidable delay, to report for duty after being assigned to an extra board position within 15 days after being notified by certified mail, return receipt requested, sent to the last address given, shall be considered as resigned."

Since the sixty-eight Claimants failed to present any evidence of unavoidable delay, as required by the provisions of the above quoted agreement, and Carrier, having complied fully with the Notification procedures, we cannot agree with the contention of the Petitioning Organization that the language of the Agreement is discretionary or permissive. The words "shall be considered as resigned", are clear, precise, unambiguous and final. Carrier complied with this Agreement and we can accordingly find no violation. Claim will 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1970.