

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19503
Docket Number MW-19451

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Florida East Coast Railway Company

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

(1) The Carrier violated the Agreement when it notified Messrs. B. H. Hohenstein, L. V. Langston, Wilmar Scott, J. J. Sheffield, R. L. Davis, R. L. Dixon, Anthony Cianciaruli, Andrew Johnson, Rabin Jarriel, Robert Gordon, A. B. Reed, W. A. Dixon, Reubin Rushing and J. H. Hurd that they had forfeited their seniority and severed their employment relationship with the Company due to alleged failure to comply with Rule 32(e) of the Agreement. /System File C-5 (FRC)/

(2) The Carrier shall restore the 14 aforementioned employees to their rightful places on the appropriate seniority roster or rosters.

OPINION OF BOARD: Claimants allege violation of the Agreement account Carrier improperly invoking Rule 32 (e) of the Agreement, thereby wrongfully divesting claimants of seniority rights and severing their employment relationship with Carrier. Claimants ask to be restored to their appropriate seniority roster or rosters.

FACTS

A voluminous record, including Carrier's Exhibits A through P, shows that on January 16, 1963, the Brotherhood of Maintenance of Way Employees issued a strike call to all of its members employed by Carrier. The strike was scheduled to and did begin at 6:00 A.M. on January 23, 1963. Also on January 16, 1963, the Carrier notified all of its employees that their positions would be abolished "Effective at 6:01 A.M. January 23, 1963 after commencement of strike."

The record shows that at all times herein relevant the claimants were on legal strike.

In February 1970, while claimants were still on a legal strike, Carrier mailed job vacancy bulletins to each claimant at the address listed in Carrier's files. The envelopes containing these bulletins were returned to Carrier by the U. S. Post Office bearing various notations to the effect that claimants were not at the listed address.

Carrier then wrote to each claimant advising that mail sent to the last address furnished Carrier had been returned by the Post Office and that he had forfeited his seniority rights and severed his employment relationship with the Carrier. In this communication Carrier quoted Rule 32 (e) as the basis for the forfeiture of seniority and loss of employment relationship.

Rule 32 (e) reads as follows:

"(c) When employees laid off by reason of force reduction desire to retain their seniority rights they must file their names and addresses in writing not later than ten (10) calendar days from date cut off. This notice from the employee must be sent in duplicate to the head of his department, the Roadmaster for the Roadway Sub-Department; the Supervisor Bridges and Buildings for the Bridge and Building Sub-Department; the Engineer Water Service for Water Supply Sub-Department, and the Superintendent for Crossing Watchmen Sub-Department, which officer will return one copy receipted to the employee. Periodic renewal of address is not thereafter required, but it is the responsibility of the employee to advise promptly in similar manner of any change in address. Until an employee has complied with this rule he has no service rights under his seniority status. Failure to comply with this rule will cause automatic forfeiture of seniority and employment relationship."

CONTENTIONS OF PARTIES

In progressing the claim on the property the Organization contended that claimants, being participants in a legal strike, were not subject to the application of Rule 32 (e). Award No. 15021 and Award No. 16075, between this Carrier and another craft and dealing with a change-of-address rule similar to the one herein, were urged as supportive of the claim.

Carrier asserted that these Awards dealt with a rule sufficiently different from the one herein invoked by Carrier to make their rulings inapplicable to this case. Carrier further asserted that Rule 32 (e) applies to an employee on legal strike.

RESOLUTION

The record, including Carriers comprehensive submission, clearly establishes that the claimants were on a legal strike at all times relevant herein. Consequently, and notwithstanding Carrier's contentions as to differences between the rule in Awards No. 15021 and 16075 and Rule 32 (e)

herein, we are unable to find any substantial distinction between the principle involved here and the one involved in those Awards. We regard those prior Awards as determinative of the issues herein and we shall therefore sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1972.