

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19835
Docket Number CL-19855

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(J. F. Nash and R. C. Haldeman, Trustees of the Property of
(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7123)
that:

1. Carrier violated the Agreement between the parties dated May 1, 1955, as amended, when it abolished all Group 1 clerical positions at Manchester, New York, July 1, 1970 and, as a direct result of such action further violated the Agreement, especially Rule 19 thereof, when it removed Mrs. Phyllis Blaisdell's name from the Buffalo District Seniority Roster, and

2. Carrier shall now be required to restore Mrs. Phyllis Blaisdell's name to said seniority roster.

OPINION OF BOARD: Claim #1, as it relates to alleged violation of the Agreement by abolishing certain clerical positions at Manchester, New York, has been fully considered by this Board in Award 19833 and for the reasons stated therein, the Claim is **dismissed**.

The remainder of Claim #1 and Claim #2 deal with Carrier's removal of Claimant's name from the Buffalo District Seniority Roster and a request that she be restored to said seniority roster.

The basic issues concerning removal of certain Manchester, New York employees from the seniority roster were discussed at length in Award 19834. This decision does not overturn the determination in that Award, but the case turns on different fact circumstances.

Carrier raises a procedural defect in pursuing the agreement's grievance machinery. Because the matter is decided on other grounds, it is unnecessary to reach the procedural question raised.

As did the Claimant in Award 19834, Claimant relies upon an asserted "agreement" whereby certain employees on furlough at Manchester, New York would not be required to accept positions at Buffalo, New York (a distance of 100 miles), As the Board stated in its Opinion in Award 191334 "Carrier denied such an agreement, and the record remains unclear in that regard." When an Organization alleges an "agreement" which alters contractual language, it assumes a duty to

prove the existence of such an understanding by a reasonable preponderance of the evidence. No purpose is served here by a detailed listing of the specific assertions of each party. Suffice it to state that one party states there was such an agreement, and the other party denies such an understanding. The record has been studied and restudied and the conflicting assertions weighed, one against the other. On balance, in the final analysis, the Board is unable to conclude that the evidence **preponderates** one way **or** the other, and accordingly, the Board is unable to find that the Organization sustained the burden of showing that there was a meeting of the minds between the parties to alter the terms of the Agreement.

But, unlike the Claimant in Award 19834, Claimant herein **rested** her failure to return to service solely upon the alleged "agreement."

Claimant herein was notified, by letter dated November 2, 1970, that a clerical assignment had occurred in Buffalo, and that she was to fill the position. On November 3, 1970, Claimant corresponded with the Carrier concerning a desire to remain on the seniority roster and listed her address. **Assumedly**, that letter was written by Claimant prior to receipt of the Carrier's November 9, 1970 letter. In any event, on November 9, 1970 the Carrier again w-rote to Claimant. In that letter, it repeated reference to the **Buffalo** position; cited rule 19(c) of the Agreement, and advised that Claimant was required to accept the assignment.

Also on November 9, 1970, Claimant replied to the November 2, 1970 letter and mentioned the alleged "agreement" referred to above.

Obviously recognizing the confusion of letters crossing in the mail, the Carrier again **wrote** to Claimant, on November 11, 1970, and denied the existence of the "agreement" as alleged by Claimant. In conclusion, Carrier referred to its November 9, 1970 letter, which had recited Rule 19(c).

The record shows no response to the November 11, 1970 letter, and on November 24, 1970, Claimant was advised that her name was removed from the clerical roster of the Lehigh Valley Railroad Company.

Other positions of the Organization dealing with asserted obligations by the Carrier to fill the Buffalo position by other means do not appear to have been raised on the property, and accordingly are not properly before this Board at this time.

Claimant, in Award 19834, advised the Carrier of personal reasons for not returning to service. This Board found those reasons to be "satisfactory" under Rule **19(c)** and restored Claimant, therein, to the seniority roster.

In this case, Claimant relied solely on the alleged "agreement" as 2 basis for refusing to return to service, On the property, the Organization relied on that ground and on some unsubstantiated references to "qualifications." No other reason was advanced, on the property, as a "satisfactory" reason for failure to return to service.

For the reasons cited in the Opinion in Award 19834, this Board, is, indeed, reluctant to divest an employee of the security of seniority. Yet, the Claimant failed to respond to the Carrier's November 11, 1970 letter and made no effort to supply any "satisfactory" reason as contemplated by Rule 19 (c). Under those circumstances, the agreement is clear. The Claim will be denied.

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; end

That the Agreement was not violated

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.