NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20711
THIRD DIVISION Docket Number CL-20879

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Cincinnati Union Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7637) that:

(a) The Carrier violated Rule 17 of the current Roles Agreement by improperly removing the names of 79 claimants, Listed below, from the 1972 Cincinnati Union Terminal seniority roster, thereby, depriving them of the rights and benefits to which their seniority would entitle them.

(b) The Carrier now be required to restore these employes to their former and proper position on the Cincinnati Union Terminal seniority roster and that all rights, privileges and benefits, to which their seniority entitled them, be restored.

Anderson Allmon
Russell Althoff
C. E. Arthur
F. C. Baker
Maceo C. Barnes
James Bennett
Claude Bolton
Earl G. Burress
James R. Burress
J. B. Canfield
Jos. B. Dickman
C. E. Evans
R. H. Gerde
Nelson Gibson
Joshua Glover
Clarence Gramke
C. E. Grant
L. A. Groh
P. M. Gross
Milton Harris
Isaac Hill
Gertrude Hoffman
G. W. Hunter, Jr.
Eileen Jeter
E. W. Chandler
E. B. Clayton
C. W. Collier
Walter M. Collins
Wm. Combs, Jr.
Randolph Cornett
J. L. Craddock
Arnet Daly
Isaac Davis
J. B. Davis
Henderson Phelia
James H. Reeves
W. G. Reynolds
L. D. Romito
R. L. Ruffin
Raymond Rusche
F. E. Scheidenberger
R. P. Sharp
H. E. Smedley
Jerome R. Smith
Delmaray Spencer
Howard Stewart
Philip Stewart
William Sutton

W. H. Kennedy
R. A. Kloenne
Jason Lewis
Clarence Lightner
W. O. Lockett
G. S. Lucas
Ralph Luebbering
James McGee
Dominick Mangino
James Meece
Lonnie Mincy
Handy Money
H. G. Morgan
W. H. Noble
Wm. Pennington
C. T. Percer
Ervin Taylor
R. E. Tebelman
Frank Thaman
James D. Thomas
James D. Thompson
Djoka Vukich
D. B. Walker
Mildred Walker
Raymond Washington
P. G. Wenzel, Jr.
Helen Wilkins
Henry R. Williams
Annie Wimbush
Harold M. Wood
Louis Woodyard

OPINION OF BOARD: The instant claim alleges that Carrier violated Rule 17 of the controlling Agreement when it removed from the 1972 Cincinnati Union Terminal Company Seniority Roster the names of 79 claimants listed in the Statement of Claim filed by Petitioner herein. Accordingly, Petitioner demands the restoration of claimant's names to their former position on the seniority roster and that all rights, privileges and benefits to which they were entitled by seniority be restored.

At the outset, Carrier raises a procedural objection that the claim was not handled on the property "in the usual manner" and is, therefore, improperly before the Board. It is clear that this Board recognizes the importance of orderly and timely handling of all grievances, as witnessed by numerous Awards issued by all Divisions dismissing claims on such grounds as urged by Carrier herein. We do not derogate therefrom, however, when we temper our analysis of the instant case by considering the large number of persons involved and the fact that there was considerable handling of the dispute on the property, including conferences. In all of the circumstances, we deem it appropriate in this case to proceed to a consideration of the merits rather than disposing of the matter upon a procedural technicality.

Paragraph 2 of Rule 17 of the applicable Agreement provides:

"Employes desiring to protect their seniority rights and to avail themselves of this rule. MUST, within five (5) days from the date actually reduced to the furloughed list, file their names and addresses in duplicate in writing, both with the proper official (the officer authorized to bulletin and award positions) and the duly accredited representative, advise promptly of any change in address and renew names and addresses in November of each year, or FORFEIT

"ALL SENIORITY RIGHTS, except in cases of personal illness or unavoidable causes." (Emphasis supplied.)

There is no question that claimants, inter alios were "reduced to the furlough list in 1971." The Carrier states, and it has not been refuted, that at the time of their furlough claimants, and others reduced to the furlough list, were provided a prepared form upon which they could fill in their name and address to file with Carrier in compliance with Paragraph 2 of Rule 17. The record shows that said forms were completed and filed with their employing officer by 98 other furloughed employees but not by the 79 claimants herein. All who complied with the Rule were continued on the 1972 seniority roster when it was issued. The names of the 79 claimants were not so included because of non-compliance with the Rule.

The language of Paragraph 2 of Rule 17 is clear and unambiguous. This Board cannot sit to dispense its personal brand of equity and industrial justice, but must interpret and apply the Agreement rules as written. Thus, the only issue presented on this record is whether Petitioner has proved by substantial and probative evidence that claimants complied with the Rule. Upon careful consideration of the record we conclude that the requisite proof has not been adduced.

It is argued that claimants fulfilled the Rule requirement by applying for employment with the owning railroads of the Terminal Company under the provisions of Appendix C-l of the National Rail Passenger Corporation (Amtrak) Agreement. Said applications were accepted by the Cincinnati Union Terminal Company pursuant to its agency agreement with the owning railroads. But this did not have any effect upon the Agreement between the Terminal Company and its employees and plainly did not meet the express mandatory requirements of Rule 17.

There is no evidence in the record to support any contention that Carrier had established a practice which waived the requirements of Paragraph 2 of Rule 17. Rather what evidence there is as to practice is to the contrary. Moreover, the Board has held in numerous decisions that a rule that is clear and unambiguous may be invoked by either party at any time notwithstanding any alleged prior practice to the contrary.

We have no alternative but to deny the claim.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May 1975.