NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20852
THIRD DIVISION Docket Number TD-20873

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Articles IV(g), IV(i) end VI(a) thereof in particular, when beginning May 1, 1972 it granted former Train Dispatcher J. C. Hollowell leave of absence without agreement between the Superintendent and General Chairman as required by the provisions of Article VI(a).

(b) Because of said violation, Carrier shall now be required to remove the name of J. C. Hollowell from the Train Dispatcher seniority roster.

OPINION OF BOARD: In early 1970, Hollowell made inquiry concerning a leave of absence (to begin May 1, 1970) in order to accept a position as Chief Dispatcher with the Winston Salem Southbound Railway, The General Chairman advised the Carrier's Superintendent that the Organization was agreeable to granting Hollowell a twenty-four (24) month leave; but forewarned the Carrier that it would not be agreeable to any further extensions.

In July of 1972 (after expiration of the 2 year leave of absence), the General Chairman took exception to Carrier's position that Hollowell would be continued on the seniority roster, and this claim ensued.

The Organization notes that under Article VI(a), a leave of absence in excess of ninety (90) days shall be by agreement between the appropriate Superintendent and the General Chairman. The agreed upon leave of absence was for twenty-four (24) months, and thus (according to the Organization), at the expiration of that period, and as provided in Article IV(g), Hollowell forfeited his seniority with Carrier.

Carrier asserts that the provisions of Article IV(i) control. That rule specifies that employess who accept official positions with "... either the Company, its subsidiaries, or . . . will retain and accrue seniority."

It is conceded that the Carrier owns 50% interest in the Winston-Salem Southbound.

The Organization suggests to this Board that Hollowell's employment with the Winston Salem Southbound was not in an "official position." However, we are unable to find that such a position was presented or urged on the property and accordingly, it is not now properly before us.

Rather, we feel that the sole issue presented is an interpretation of the word "subsidiaries" as contained in Article IV(i). If, in fact, the Winston Salem Southbound falls within that category, a discussion of leave-of-absence is purely academic. On the other hand, if the word does not embrace the WSS, clearly, Hollowell has forfeited his seniority.

Certainly, the Organization and Hollowell and (in the absence of contrary indication in the record) presumedly the Carrier did not consider that Article IV(i) was applicable in May of 1970: otherwise discussions of duration of the proposed leave of absence constituted purely useless correspondence.

We have thoroughly reviewed the Awards which have verbalized the obvious concept that seniority rights are, indeed, valuable rights which may not be lightly dismissed, and we have considered the Carrier's assertion that the Board should avoid applications of "literalness" which may "strangle meaning." In short, the Carrier urges that acceptance of the "technical" and narrow definition of the word "subsidiaries" will result in an overly legalistic determination which will defeat the true meaning of the Agreement, provisions.

Conversely, the Organization notes that Carriers are not reluctant to insist upon precise dictionary definitions of contractual terms when it is to their advantage to do so. In this regard, the Organization relies upon definitions contained in Black's Law Dictionary as well as Webster's to demonstrate that the word in question denotes a control by another Company which owns at least a majority of the shares. Such is not the case here.

For this Board to ignore a true dictionary definition of a word contained in a Rules Agreement, we would require a strong showing that the parties intended some meaning other than the one commonly ascribed to the word. The Carrier has not demonstrated any such contrary indication here, and the record shows that the parties freely selected the word "subsidiaries" rather than the broader term "affiliates." While a technical application here may seem to produce harsh results, nonetheless, the Board feels compelled to be restrained from substituting its own definition which, in essence, tends to rewrite the Agreement, which is clearly beyond our authority.

We have not minimized the fact that a valuable seniority right is in issue. In this regard, we have also considered the seniority rights of other employees under the Agreement; which must be protected. The parties who wrote the Agreement are the ones to alter it. It serves no valid purpose for this Board to deviate from the terms of the document. We will 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 Employes involved in this dispute are respectively Carrier and Employee 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: G. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1975.