

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24506
Docket Number CL-24389

Robert Silagi, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Southern Railway Company

STATEMENT OF CLAIM: Claim Of the System Committee of the Brotherhood
(GL-9530) that:

The names of two (2) former clerical employees of the Carrier's Eastern Division, who were subsequently hired by the Carrier's Security and Special Services Department as Patrolmen, were being improperly retained on Division Seniority Rosters.

Because of this impropriety, the Carrier shall now be required to remove their names from the respective Seniority Roster.

OPINION OF BOARD: Since the filing of the claim one of the claimants, D.A. Phillips, died and the question of his seniority is moot. Accordingly this opinion will deal only with the status of the other claimant, D. L. Settle.

The issue in this case is whether an employee who held seniority under the Organization's agreement may retain such seniority after taking a position in Carrier's Police and Special Services Department,

Settle, with seniority date December 28, 1973, was a yard clerk covered by the Employees' agreement. On October 9, 1978, he was promoted to Carrier's Police and Special Services Department. After his promotion Settle's name was nevertheless retained on the seniority roster for the district in which he formerly worked as yard clerk. The Employees contend that such retention on the seniority roster violates Rule B-5 of the agreement between the parties.

Rule 3-5 Promotion to official or excepted positions.

"(a) Employees covered by this agreement who have heretofore been promoted to and now occupy official or excepted positions with the Carrier, or positions with the Organization, occupying their entire time, and employees who may hereafter be promoted to any such positions either with the Carrier or the Organizations shall retain all their rights and continue to accumulate seniority in the districts from which promoted. When official or excepted positions are filled by other than employees holding seniority under the respective rules of this agreement, no seniority shall be established by such agreement to positions covered by the scope of this agreement.

At the heart of **this** dispute is the question as to whether **Settle's** promotion was to an "official or excepted position." The **Carrier** asserts that **Settle** was promoted to "Special Agent", an **official** or excepted position, and consequently he continued to accumulate seniority **in** the district from which he was promoted. **The Employees** argue that **Settle was promoted** to the job of "Patrolman" which is not encompassed within official or excepted positions.

It must be noted at the outset that the **Employees'** contention that **Settle was promoted to "Patrolman"** first appears in its **ex parte submission**. **All** correspondence between the parties clearly identify the position as that of "Special Agent". While the **labelling** of a position as "Patrolman" creates a suspicion that it is not an official position, It is not conclusive proof. Award 13242 (Dorsey). **Indeed** the record is barren of **any evidence** as to the duties of a patrolman which might distinguish them from those of a special agent. **In** this regard the **Employees** failed to carry the **burden** of establishing facts and evidence sufficient to support its **claim**. Award 17828 (Devine).

A careful **review** of the awards **cited** by the **Employees** show that it is not permissible, unless the agreement so provides, to allow an employee to hold seniority in **two** different **crafts** or class of employees covered by **different agreements** at the same time. Third Division Award 6261 (Wenke). We have no **quarrel with** such an interpretation of the **law**, but there is no showing in this record that **Settle, in fact**, held seniority on two different roster **simultaneously**.

It is well settled that issues and contentions not raised on the property **may not be considered de novo** by this Board at the appellate level. Awards 22598(Scearce); 22199-Roukis; 22831- Scheinman and others.

For the reasons stated above we shall deny 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 Employee** 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.