NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25617

THIRD DIVISION Docket Number MS-25781

Hyman Cohen, Referee

PARTIES TO DISPUTE: (James R. Brawner
(Earl E. Winfield, Jr.
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

whether this Company or its representatives be allowed to force us out of the Union upon taking a promotion to management?"

OPINION OF BOARD: Claimants Brawner and Winfield entered the service of the Carrier on March 26, 1973, and April 9, 1973, respectively. When they entered the Carrier's service, each Claimant held the position of Reservation and Information Clerk which was covered under the Corporate Agreement between the Carrier and the Organization. Claimants Winfield and Brawner were promoted to the position of Reservations and Information Supervisor on August 31, 1973, and March 19, 1974, respectively. Both positions were excepted from the provisions of the Corporate Agreement. The Claimants were suspended from the Organization for non-payment of dues. Claimant Winfield was suspended in December, 1973, and Claimant Brawner was suspended in June, 1974. Neither Claimant's name appeared on any Organization Roster subsequent to 1974.

As a result of the Carrier's acquisition of the Northeast Corridor, contract employes at the Carrier's Reservation Sales Offices in the Northeast Corridor, although still governed by the Agreement, were placed on the Rosters of the particular Northeast Corridor Seniority District in which their offices were located. Consequently, Roster protests of employes concerning Northeast Corridor Seniority Rosters since that time are governed by Rule 3-D-l of the NEC Agreement dated July 27, 1976.

In accordance with the terms of the May 27, 1982 Agreement between the parties, the excepted positions held by the Claimants were made subject to the Union Shop Agreement. The Claimants again acquired membership in the Organization and began paying dues on July 26, 1982. Both Claimants were included on a revised 1983 NEC Seniority District II Roster with a seniority date of May 27, 1982. The Claimants protest the loss of their original seniority date.

After carefully examining the record, the Board concludes that it lacks jurisdiction to review this case. Both the Carrier and the Organization agree that the Claimants' seniority has been established under the terms of the May 27, 1982 Agreement. The Claimants were so notified by letters from the Carrier dated March 16, 1984. It is well established that the Board lacks jurisdiction to overturn settlements reached between the duly authorized representatives of the Carrier and employes. See Second Division Award No. 8826. Moreover, since the parties have reached "a mutual, definite and final decision on any question affecting seniority" under Rule 2-B-1(d) it would be improper for the Board to interfere with the decision of the parties to the Agreement.

Assuming that the Board has jurisdiction in this case, the merits of the instant claim lacks adequate support in the record. Rule 2(e) provides for the retention of seniority for employes promoted to official or excepted positions only if they **maintain** membership in the Organization. Both Claimants acknowledge that they relinquished membership in the Organ-ization in 1974. If the Claimants relinquished membership in the Organi-**zation** upon the advice of their Supervisor, it was their responsibility at the time (1974) to seek counsel from the Organization or from the Carrier's Labor Relations Department regarding the propriety of that advice.

It should also be noted that under Rule 2(e), the Carrier was under no contractual requirement to notify Claimant Brawner or provide him with a hearing concerning his failure to maintain good standing with the Organization and his forfeiture of seniority.

In light of the aforementioned considerations, the Board lacks jurisdiction to consider the instant claims; and had it possessed juris-diction, the merits of the claims lack evidentiary support.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.