

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

(a) Carrier violated the Scheduled Agreement, particularly Rules 3-G-1(b) and the Union Shop Agreement, when it failed to terminate R. E. Williams on January 12, 1984.

(b) Carrier should now be required to terminate Mr. R. E. Williams for violation of these rules and re-bulletin the Electronics Specialist position he was assigned on October 1, 1984. Carrier file: R. E. Williams."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization and Carrier are parties to a Union Shop Agreement that requires employees working within the craft and those retaining seniority in the craft to maintain membership in the Union. R. E. Williams, who was a member of the Signalmen's Organization at the time, accepted promotion to an exempt position of Circuit Designer in mid 1982. After his promotion, he stopped paying Union dues. In August, 1983, the Organization notified the Carrier of this delinquency. The Carrier, by Certified mail, advised Williams of the charge that he was not in compliance with the Signalmen's Union Shop Agreement. He was told his employment and seniority would be terminated within thirty days unless he requested a hearing on the matter. Williams did not respond to the letter. In January, 1984, he was notified by the Carrier that he had forfeited his seniority under the Signalmen's Agreement. He continued to work for the Carrier on a position outside the Agreement.

At the end of February, 1984, Carrier advertised a position of Electronic Specialist under the Signalmen's Agreement. Williams applied for the job. In September of 1984, Carrier notified him he had been selected to attend school in connection with his assignment to the position. The Organization contends this assignment is improper and seeks to have it rescinded and the position rebulletined. The Carrier contends that Williams' assignment to the position was proper "as a nonagreement employee" and that he established new seniority as of the date of the appointment.

It seems clear that, under the accepted application of a Union Shop Agreement, all that is required in instances where termination results from non-compliance or failure to request a hearing is separation from seniority and employment under the applicable Working Agreement. The termination provisions of a Union Shop Agreement cannot be extended to positions over which an Organization has no bargaining authority. Thus, we do not consider it improper under the Signalmen's Working Agreement or its Union Shop Agreement for Carrier to retain Williams in employment in a position outside the Signalmen's Agreement following his forfeiture of all Signalman's seniority. Additionally, it seems clear that, under the accepted application of a Union Shop Agreement, once an employee loses his seniority and job under the applicable Working Agreement, he cannot be rehired at a later date as a new employee for work under the Agreement. We have issued a number of Awards on this point. In Third Division Award 16838, we held:

"We find that an employee that has worked under the Union Shop Agreement subject to the Rules and Working Conditions Agreement between Carrier and Clerks for the periods prescribed in the Union Shop Agreement must, as a condition of further employment on work covered by Clerks' Agreement, be in compliance with the obligations imposed on him by the Union Shop Agreement. Carrier, consequently, may not rehire an employee whose service it has terminated for failure to comply with the Union Shop Agreement and treat him as a stranger to that Agreement."

And, in Third Division Award 17974, we held:

"Carrier's defense that it was free to hire Picket 'as a new employee' on February 1, 1967, is a ruse which if accepted as a premise would permit continued employment of an employee, and permit the employee, in conspiracy with Carrier, to evade the Union Shop Agreement."

Accordingly, we find that the re-employment of Williams on a position subject to the Signalmen's Agreement is in violation of the Union Shop Agreement. The relief requested in Part (b) of the Statement of Claim will be granted.

Form 1
Page 3


Award No. 26833
Docket No. SG-26652
88-3-85-3-395

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.