

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(St. Louis Southwestern **Railway** Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it improperly returned Messrs. Q. T. **Branson**, L. Bolzenius and **B. Haggard** to the hiring eligibility list as contemplated by Memorandum of Agreement dated August 27, 1980 and Memorandum of Agreement dated July 26, 1982 (**System** File SSW-S-3/396-54-A).

(2) The Agreement was also violated when Mr. Q. T. **Branson** was awarded laborer positions as advertised by Bulletins **#24** and **#25** dated June 1, 1983 and June 15, 1983, respectively, and when Mr. L. Bolzenius was awarded a foreman position as **advertised** by Bulletin **#25** dated June 15, 1983 and when Mr. B. L. Haggard was awarded a foreman position as advertised by Bulletin A23 dated May 16, 1983 (System Files SSW-P-744/395-73-A; SSW-B-14/395-74-A; SSW-P-7451396-86-A).

(3) The three (3) most senior employees listed on the hiring eligibility list as **contemplated** by Memorandums of Agreement dated August 27, 1980 and July 26, 1982, who were eligible and available for the **positions** listed in Part (2) hereof shall each be compensated for all wage loss suffered as a result of the violations mentioned in either Part (1) and/or Part (2) hereof and the Memorandums of Agreement mentioned in Parts (1) and (2) hereof **shall** be properly applied."

FINDINGS:

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

The carrier or carriers and the employe 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 were given due notice of hearing thereon.

The instant case deals with the alleged violation by the Carrier of various provisions of a number of Agreements signed between it and the Organization in 1980 and 1982. At issue is whether the Carrier had properly assigned three employees from the Rock Island Railroad after it had purchased portions of trackage of that former Carrier.

The Board has closely studied the progression of the claim(s) filed by the Organization relative to this dispute on property. The Board is hesitant to frame Awards on procedural grounds when it is a question of relief associated with claims. But when the relief requested by the Organization on the property is at variance with that requested before this Board, the Board must seriously question its jurisdiction over such a case under Section 3, First (1) of the Railway Labor Act.

The instant case deals with a number of claims which are sometimes treated by the Organization as one, and at other times as separate **claims**. In response to an internal memo of the Carrier which is dated April 4, 1983, the General Chairman wrote to the Regional Engineer of the Carrier at Kansas City on May 17, 1983, that he took **"...exception"** to the returning of the names of fellow employees C. L. Earnest, B. L. Haggard, L. Bolsenius and Q. T. **Branson** to the hiring list for eligible former Rock Island employees...." This letter states that the Carrier should consider **"... (the) claim** as continuous under the provisions of Article 15(2) of the current Agreement until such time the appropriate corrections are made." This file is designated SSW-S-3. For reasons which are unclear the name of Mr. Earnest disappears from the record but the remaining three employees reappear in further correspondence and are ultimately named in the Statement of Claim before the Board. On June 24, 1983, **the** General Chairman sent three concurrent pieces of correspondence to this same Regional Engineer, **Kansas** City. These represent overlapping claims dealing with the three remaining employees first mentioned in the **May** 17, 1983, letter. One letter, designated File SSW-B-14, requested that the assignments of the three employees be **"...rescinded as well as the appropriate action of correcting the erroneous action taken by the Carrier in this matter."** The other two letters on that same date respectively deal with employees Bolsenius and Haggard (File SSW-P-744) on the one hand, and employee **Branson** (File SSW-P-745) on the other. Both of these letters request **"...all** lost wages in behalf of **...senior** furloughed employees listed on the appropriate St. Louis Southwestern Seniority Roster who (were) deprived of employment as the result of the Carrier's arbitrary action taken in this matter." Throughout the handling of these claims on the property after that point, the **Organization** never again specifically refers to the type of relief requested in these two latter claims filed on June 24, 1983. The Board may speculate that this might have been because there were no furloughed employees on the roster **in** question after these claims were filed. Such speculative conclusion is reasonably warranted because there is no evidence of record in this case that there were furloughed employees after the disputed assignments were made. Such is but vaguely intimated by the General Chairman in his letter to the Carrier's Labor Relations' Officer under date of February 24, 1984. This letter, however, which is not directly pertinent to the claims cited above, but which is

part of the record before the Board nevertheless, alludes to a Bulletin issued by the Carrier with the observation that some of the positions on it went unassigned. The General Chairman then states in this letter that he himself was eligible for assignment and would appreciate being permanently hired. He ends this letter by stating that if the Carrier would contact him before April 1, 1984, he would be available "...for permanent employment." The record is unclear. The Submissions of either party offer no clarifications on this question of the furlough status of employees on the roster in question after the claim(s) were filed.

By the time the claim(s) were filed with the Board the relief requested no longer specifically dealt with senior furloughed employees, but only with compensation for the "...three most senior employees...on the hiring eligibility list...for all wage loss suffered as a result of" the alleged violations by the Carrier when employees **Branson, Bolzenius** and Haggard received their assignments. Absent evidence of furloughed employees, and absent even reference to such by the filer of the claims after June 24, 1983, the Board must conclude that he materially changed the relief sought to the more general proposition of "...all wage loss suffered" by senior employees when the case was filed before the Board. This more general proposition **must** be construed by the Board to include not only loss because of potential furlough status, but also losses incurred because of other potential factors never raised during the handling of this case on the property. Such could include, for example, wage differential losses by the three most senior members on the seniority list if employees **Bolzenius**, Haggard and **Branson** had received assignments to higher rated positions to which the three most senior members had prior eligibility, etc. Secondly, the **June 24, 1983** claim explicitly requests that the assignments of the three employees cited in the foregoing be "...rescinded" because of alleged Agreement violations when they had received their assignments. That relief request is changed by the time these claims reach this Board and such, which was an integral part of the File SSW-B-14 claim filed on June 24, 1983, is no longer part of the claim(s).

The reasoning used by the Organization in requesting relief in this case is obtuse. In **attempting** to reconstruct the logic of the change in the claim from original filing to the time these claims reached the Board, in view of all of the evidence of record, it appears that the Organization may have realized that there were no furloughed employees after it filed relief for them in 1983, on the one hand, and that it furthermore realized that there were extreme logistical problems inherent in its request that the Carrier **"...rescind"** the **assignments** of the three employees on the other hand. The Organization cannot be faulted with respect to the latter since there were extreme logistical complexities intrinsic to the nature of the claim(s) themselves. In either case the Organization apparently then opted, in finally

submitting the claims to the Board, for a third variation of relief which it may have felt would have been reasonably workable if the Board would have issued a sustaining Award. By going this route, however, the relief and thus the claims themselves underwent a metamorphosis which the jurisdictional standards of the Board cannot **support**. The conclusions reached by Second Division Award 6657 are applicable to the instant case. In that Award the Board **stated**:

"A review of the claim as it was handled on the property and as submitted to this Board reveals that the claim as originally submitted was changed on the property and further amended ~~when it~~ was presented to this Board. It is our opinion that the claim ~~now~~ before us ~~is~~ substantially at a variance with the claim handled on the property. Consequently, we are left no alternatives other than to conclude that the claim is procedurally defective as it violates Section 3, First (**i**) of the Railway Labor Act, compelling a dismissal without reaching the merits thereof."

(Also Third Division Awards 13235, 20279.) The Board is left with no other reasonable course but to dismiss these claims on the basis of the precedent cited above. In so doing, it offers, therefore, no conclusions relative to the merits of the claims.

A W A R D

Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at **Chicago**, Illinois, this 17th day of March 1988.