

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Mike **Madewell** and Susan **Madewell**)

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"(A) Did the Grievants timely file a verification of address with the Railroad as required by Rule 17-B of the Bargaining Agreement?

(B) If so, did the Company improperly terminate their employment?

(C) Did the Grievants timely file a grievance under Rule 47 of the Bargaining Agreement?"

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 were given due notice of hearing thereon.

At the time of the instant dispute, Claimants (husband and wife) were off-in-force reduction employees with April 24, 1971 and October 5, 1970, clerical seniority dates, respectively, on the Southern Division Station Department seniority roster. At issue here is Claimants' alleged noncompliance with Rule 17-B of the Clerks' Agreement that resulted in the forfeiture of their seniority rights and the removal of their names from the Southern Division station seniority roster. The provisions of Rule 17-B state as follows:

"Employees who become off-in-force reduction must promptly advise their employing officer of their current address (unless their current address is on file) and promptly advise of subsequent changes therein. Employees off-in-force reduction who do not perform service under this Agreement during a calendar year, must file their current

address with their employing officer during the month of December of such calendar year and failure to file in December shall result in forfeiture of all seniority rights."

After the Southern Division Station seniority roster was posted on January 11, 1984, Claimants submitted a letter to Carrier dated January 13, 1984, advising that their names had been removed from the seniority roster in error. Carrier responded that it had not received notification of the Claimants' address in December, 1983, as required by Rule 17-B.

By letter dated March 12, 1984, Claimant submitted an appeal pursuant to Rule 4-C of the Agreement. Attached to the letter were copies of the Claimants' original December 23, 1983, notification, stamped received December 29, 1983, on Carrier's watermark paper. Claimants contend that they received the copies through the U.S. mail in a Santa Fe Superintendent Office envelope.

On April 18, 1984, Carrier denied the Claim. Organization and Carrier representatives met on December 4, 1984, to discuss the matter at which time the Carrier presented a signed statement from a file clerk stating that "such a notice by the Claimants would not have gone unnoticed for such a long period of time." The Carrier also took the position that the time limits for filing a claim had not been met. An extension of time to appeal this case was requested by the Organization and was granted until April 1, 1985. Carrier received another Appeal Letter on February 25, 1985, advising that the law firm of Sears and Parker had been retained by the Claimants to present their appeal. In that letter, the original claim submitted by the Claimants requesting that they be returned to their proper seniority was amended to include a request for **backpay**.

Before turning to the merits, several procedural objections have been raised by the Carrier which must be addressed. First, Carrier has argued that the claim was not timely because it was not filed within sixty days of the occurrence on which the claim is based. We find this position is not well taken since, pursuant to Rule 4-C, "upon presentation of proof of error by an employee or his representative, such error will be corrected." From the foregoing language, it appears that the employee has an opportunity to present proof of error before resorting to the formal grievance procedure. On January 13, 1984, two days after the seniority list was posted, Claimants sent Carrier a copy of their December 23, 1983, letter with a date stamp on it dated December 29, 1983, thereby giving Carrier the opportunity to correct the error. It was not until January 23, 1984, that the basis for the grievance arose when Carrier denied Claimants' claim that an error had been committed. Since the formal grievance was filed on March 12, 1984, **it** was well within the sixty days time limit provided in Rule 47.

Carrier's assertion that Claimants did not properly handle the instant claim because it was appealed by the law firm of **Sears** and Parker for a second time on the property is correct because Rule 47 of the Agreement between the Carrier and the Organization sets forth the Rules with respect

to whom can handle employee claims on the property. Thus, Rule 47-A provides that "All claims or grievances must be presented in writing by or on behalf of the **employee** involved" and that the Carrier, if it declines the Claim or Grievance must "notify whoever filed the Claim or grievance (the **employee** or his representative) in writing of the reasons for such disallowance." While Rule 47-A does not define the term representative, Rule 47-C does. Rule 47-C states:

"Rule 47-C. Rule 47 recognizes the right of representative of the **Organization**, party hereto, to file and prosecute claims and grievances for and on behalf of the employees they represent."

The Agreement clearly limits the parties who can handle Claims or Grievances on the property of the Carrier to the individual Claimant or the duly authorized representative of the Organization. This Board has consistently recognized the right of parties **to** a Collective Bargaining Agreement to limit the representative rights of employees in the handling of their Claims or Grievances. See, for example, First Division Awards: 25853, 6381, 1821; Second Division Awards: 8727, 7300, 6381; Third Division Awards: 21626, 21237. It stands unrefuted that in the history of the Agreement no one other than the employees or a duly authorized representative of the Organization has handled claims or grievances while the claim is still on the property. The Claimant has not refuted such. Nonetheless, that issue becomes moot in this instance because of the fact that the Organization properly advanced and protected the claim to its highest level on the property.

On the merits, after careful review of the record evidence in its entirety, we conclude that the evidence supports the Claimants' position that verification was timely given. Carrier does not deny that the received stamp contained on the document proffered by the Claimants as their December 23, Letter of Verification is other than Carrier's own stamp. Instead Carrier argues that it was falsified. But, that argument is just that - argument, and not evidence, and we will not credit what appears to be mere surmise and conjecture on the Carrier's part. Nor do we find persuasive or probative the letter from Carrier's file clerk stating that the Claimants' December notification could not have gone unnoticed for two months. This letter, which did not surface until December 4, 1984, does not really rebut or refute the Claimants' contention that their letter was timely sent and received.

Accordingly, we rule to sustain the claim in part, but will deny the request for **backpay**. The initial claim submitted by the Claimants made no request for monetary compensation; the Statement of Claim before the Board does not refer to monetary compensation; and, there was no evidence presented that Claimants suffered monetary loss.


It is ordered, therefore, that Claimants be returned to the 1984 seniority roster, but without **backpay**.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.