

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(C. C. Brown  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "THIS IS TO SERVE NOTICE AS REQUIRED BY THE RULES OF THE NATIONAL RAILROAD ADJUSTMENT BOARD, OF MY INTENTION TO FILE AN EX PARTE SUBMISSION COVERING AN UNADJUSTED DISPUTE BETWEEN ME AND THE CHICAGO AND NORTHWESTERN RAILROAD INVOLVING THE QUESTION OF MY CRIP SENIORITY DATE OF JAN. 18, 1952 BEING RECOGNIZED AND DOVETAILED WITH CNW SENIORITY ROSTERS FOR THE AREA COVERING CEDAR RAPIDS, IOWA, AS THE TERMS OF THE MARCH 4, 1980 MIAMI AGREEMENT SO DICTATE."

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 employes 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.

On April 3, 1980, the Carrier became an Interim Service Carrier over certain lines of the former Rock Island Railroad, which ceased operation due to bankruptcy. The Carrier, along with several other railroads considering the purchase of certain lines of the Rock Island, entered into an Agreement with the various railroad labor organizations, including BRAC on March 4, 1980. This Agreement became known as the "Miami Agreement." Article II, Section 9 of the Agreement reads as follows:

"(a) In accordance with the option selected under paragraph 8 of this Article, agreements will be reached on each purchasing carrier concerning the manner in which seniority will be allocated in filling additional job assignments, between the purchasing carrier's employees and the bankrupt carrier employees hired by the purchasing carrier. In the absence of an agreement, in order to avoid delay in operations, the purchasing carrier

may, on a temporary basis, hire qualified and available bankrupt carrier employees to the extent needed where additional jobs are established at the outset. Such employees will be placed at the bottom of the current list of active employees, and they will remain in such status until an agreement is reached respecting seniority in accordance with the provisions of this paragraph."

As an interim carrier and pursuant to this Agreement, the Carrier hired on a temporary basis a number of employees of the former Rock Island to ensure that the start up of the operation would not be delayed. Several positions were created and filled with Rock Island employees. The Claimant was hired by the Carrier on July 12, 1980, and was granted a seniority date according to the date he first performed service for the Chicago and North Western.

On August 1, 1980, the Carrier and the BRAC entered into an agreement to provide the manner in which seniority would be allocated in filling additional job assignments under the terms of the March 4, 1980, Agreement. This Agreement delineated, in Article II, Section 1, the 41 jobs which the Carrier established pursuant to the March 4, 1980, Agreement. It also listed the employees occupying those positions and their seniority dates. Notably, the Claimant was not on the list.

On May 18, 1981, an attorney representing the Claimant contacted the Carrier's Vice President of Labor Relations alleging that the Carrier had not complied with the March 4, 1980, Agreement and seeking, basically, the Claimant's Rock Island seniority date on the C&NW. The Carrier responded on June 18, 1981, contending that Claimant was not subject to the provisions of the March 4, 1980, Agreement.

On June 20, 1983, another attorney contacted the Carrier on behalf of the Claimant. The Carrier responded July 15, 1983. A reply was sent by the Claimant's attorney on August 11, 1983. The Carrier responded to this reply September 23, 1983. On April 20, 1986, Claimant served notice upon the Third Division of his intent to file an Ex Parte Submission, apparently seeking a seniority date of January 18, 1952.

The Claimant's position cannot be sustained for two reasons. First, it is procedurally defective and must be dismissed without regard to the merits. Second, even if the merits were to be addressed the Claimant is not entitled to carry his Rock Island seniority to the C&NW.

Regarding the procedural deficiencies of the Claimant's case it is noted that under Section 3, First (i) of the Railway Labor Act, a claim "... shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes . . . ." If a claim is not handled in such a manner, the Board is not entitled to assert jurisdiction.

It is clear from this record that for many years on this property the usual manner for handling disputes under the BRAC Agreement for employees employed on the Operating Divisions has been to file a claim with the appropriate Division Manager. Failing to resolve the dispute at that level, appeal may then be presented to the highest Carrier officer designated to handle disputes under the BRAC Agreement. Although the claim may be discussed in conference initially with the Division Manager or his representative, the claim is always discussed in conference with the highest Carrier officer in accordance with Section 2, Second of the Railway Labor Act, 45 U.S.C. 152, Second. This provision of the Act reads as follows:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

The record is also clear that none of the procedural steps for filing a claim were followed. In line with long-standing precedent the claim must be dismissed.

Finally, it is noted that the only Agreement between BRAC and the C&NW granting seniority for former Rock Island employees was the August 1, 1980, Agreement. A review of that Agreement shows that the Claimant was not one of the Rock Island employees hired as a direct result of the Carrier's assumption of Rock Island trackage rights. Simply he was not included in the Agreement and there is no contractual obligation on the Carrier to recognize anything, but his original hire date with the C&NW.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.