

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Oklahoma, Kansas and Texas Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Oklahoma, Kansas and Texas Railroad Co.:

Claim on behalf of Brother J. C. Gatz for 120 hours pay at his straight time rate of pay account of the Carrier's violation of the Signalmen's Agreement, particularly, APPENDIX 'A' - Article III, Section 1 (d), (dated 11-16-71) when it did not grant him a five week vacation for the year 1985. Carrier file: 2619-OKT."

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.

This is a dispute over vacation entitlements. The Claimant had been employed by the former Rock Island Railroad as a Diesel Electrician from February, 1952 until March 31, 1980. On June 4, 1980, the Oklahoma, Kansas and Texas Railroad Company (OKT) began interim operations over the St. Joseph, Missouri-Dallas, Texas track of the former Rock Island Railroad. On January 31, 1981, he was hired by the OKT in the position of Assistant Signalman. When the OKT ceased operations on this line, the Claimant was terminated, effective December 31, 1981. He was again employed by the OKT on November 1, 1982, at the time that the OKT commenced operations again over former Rock Island track, and he was assigned as a Signalman on February 24, 1983. On July 19, 1984, the Claimant retired from the OKT and received two weeks vacation pay. The controlling question before the Board is whether the Claimant was hired under the March 4, 1980 Agreement ("Miami Accord") and would be entitled to have former years of service used in calculating vacation days.

The "Miami Accord" to which the Carrier and the Organization were parties is a Labor Protective Agreement that provided for the orderly hiring of former Rock Island employees. In the matter before us, the following provisions of that Agreement are pertinent:

"Article II. Hiring and Work Rules

1. Eligibility for Hiring -- All employees of the Rock Island or Milwaukee who held seniority on the effective date of this agreement in a craft represented by one of the labor organizations signatory hereto shall be eligible for participation in the hiring procedures described in this Article.

2. Determination of Need for Additional Employees -- A purchasing carrier shall determine its necessary additional manpower requirements by craft due to its taking over those Rock Island and Milwaukee Lines. Each of the determinations shall be discussed with representatives of the crafts on purchasing carrier and on the Rock Island or Milwaukee with detailed explanation to them of the basis for each determination prior to serving notice under paragraph 4 hereof, but there shall be no delay in hiring employees or in commencement of operations. If a purchasing carrier has employees on furlough, they will not be subject to recall as a result of the additional manpower requirements resulting from a transaction, until after bankrupt carrier employees on appropriate seniority rosters have exhausted their opportunity to be hired hereunder.

3. Preferential Hiring -- As a carrier determines its need for additional employees under this Article, it shall allow eligible employees in seniority order on the Rock Island or Milwaukee the first right of hire respectively, dependent on whose trackage is involved, and consistent with the purpose of Section 8 of the Milwaukee Railroad Restructuring Act. Each carrier, whether acquiring lines or operating lines on an interim basis, shall independently make such determination of its needs for additional employees irrespective of any determination of this nature made by other carriers.

In carrying out the purposes of this section, the purchasing carriers shall first utilize existing seniority rosters applicable to the appropriate craft and seniority district for the lines and territories involved in fulfilling employment needs in connection therewith.

4. Notification of Hiring -- When a carrier determines that it needs additional employees under this Article, such carrier shall notify the labor organizations representing employees of the Rock Island or Milwaukee of its specific needs and advise them exactly where and how eligible employees of the craft needed from the Rock Island or Milwaukee should apply for such vacancies. Eligible employees of the Rock Island or Milwaukee interested in such vacancies shall have the responsibility of applying to the carrier for vacancies in the manner described by the carrier. An employee shall have 7 days to apply after receipt of notice from the carrier or the organization or 20 days after the labor organization has received notice from the carrier, whichever occurs first, subject to paragraph 9 hereof. To the extent that the carrier has determined a need for additional employees under this Article, applicants will be required to meet those physical and rules standards which the carrier applies to its own employees on reexamination. The applicant's seniority in the appropriate craft and seniority district on the bankrupt carrier will prevail if the number of qualified applicants exceeds the carrier's determined need for additional employees. Bankrupt carrier employees who are in service with a bankrupt carrier at the time of interim operation or purchase and who are hired on the commencement of operations by a purchasing carrier pursuant to this Agreement will be presumed qualified physically and purchasing carrier will have the burden of proof if it wishes to challenge such qualifications.

Those employees who are subject to examination on purchasing carrier's operating book of rules may be required to pass a re-examination on those rules.

5. Duration of Preferential Hiring -- The procedures established in this Article shall continue in full force and effect for not less than one year from the effective date from the commencement of operations or as otherwise provided for by law, but in no event beyond April 1, 1984.

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Article IV. Miscellaneous

1. * * * * *

2. * * * * *

3. Milwaukee or Rock Island employees accepting employment with a purchasing carrier pursuant to this agreement will be given credit for service with the former employer in computing vacation qualification, entry rates and sick leave.

4. * * * * *

Signed at Washington, D. C. this 4th
day of March, 1980."

Prior to the Claimant's reemployment with the OKT on November 1, 1982, the various Organizations, including the Brotherhood of Railroad Signalmen (BRS) entered into a Memorandum of Understanding on October 26, 1982, modifying the application of the "Miami Accord" to OKT operations. Relevant to our deliberations in this matter is Section (2) of the October 26, 1982 Memorandum which reads:

"Article IV, Section 3, of the March 4, 1980 Hiring Agreement is modified so that for the first two (2) calendar years of operations (i.e., 1983 and 1984), former eligible Rock Island employees hired under the March 4, 1980 Hiring Agreement will be treated as new hires under the National Vacation Agreement; thereafter, they will be eligible for vacation allowances based on their former Rock Island service and accrued vacation rights on the OKT."

On November 3, 1982 the OKT and BRS signed an Agreement (No. DP-30-OKT). Particularly relevant to the matters at issue herein are Sections II, III and IV:

"II.

The Oklahoma, Kansas and Texas Railroad Company is the territory of former Rock Island trackage extending from Fort Worth, Texas, Northward to and including Salina, Kansas.

III.

Consistent with the Carrier's legal requirements the Carrier will use as a source of 'first right of hire' a list of eligible employees who were employed by the former OKT Railroad Company on December 31, 1981. Positions not filled by former OKT employees will be bulletined to list of employees furnished by the Rock Island General Chairman.

IV.

Effective with assignment to a position by bulletin, and first day worked thereon, Rock Island employees hired pursuant to the March 4, 1980 Agreement will be considered as having severed their employment relationship with the Rock Island Railroad."

The Board has carefully reviewed and considered the various contentions, submissions and awards relied upon by both parties. We note from this review that certain contentions and materials have been presented that were not submitted or discussed on the property. Therefore, these may not be considered by this Board. With respect to those questions properly before us, the parties' grounds for disagreeing are understandable in view of the multiple agreements that, in one form or another, have had an impact on this dispute. In its simplest terms, had the question only been whether the "Miami Accord" was applicable to the claim, the Organization's claim likely would have been sustained. However, such is not the case.

We find ourselves in agreement with the Carrier on the substance of this matter. The Claimant had been employed by the former Rock Island Railroad Company until March 31, 1980, as an Electrician. When he was hired by the OKT, it was in the status of a new employee in the Signaller craft. The record shows that he was hired only after there were no former Rock Island Signaller available with first right-of-hire under the "Miami Accord." We find that the "Miami Accord" covered individuals with seniority in the appropriate crafts and seniority districts of the former Rock Island Railway. Accordingly, employees, such as the Claimant, hired outside of the appropriate craft, did not benefit from the "Miami Accord" provision.

When the Claimant was again hired in November 1982, it was pursuant to the terms of the Memorandum of Understanding between the OKT and the various organizations executed on October 26, 1982, and the Signalman Agreement.

For all of the foregoing, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1989.