

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Richard S. Jalovec
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Attached hereto as Exhibit '1' is a listing of Petitioners, their seniority dates, and positions to be re-posted. Certain Petitioners submit that the seniority dates listed therein are incorrect, and they will be deprived of their employment position if the seniority dates listed in Exhibit '1' are allowed to stand. All Petitioners submit that a re-posting of the positions should not be allowed."

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 employes 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.

Claimants in this case all were employed by Conrail at Philadelphia, Pennsylvania in the Clerical craft or class under the terms of the Collective Bargaining Agreement between that Carrier and the BRAC (now TCU). By Memorandum of April 3, 1987, Claimants each were notified by the Carrier that their positions would be "reposted" under Rule 2 of that Agreement. This unilateral notice was followed on April 7, 1987 by a joint letter from the Carrier and the Organization reading as follows:

"As you should be aware, in recent years there have been substantial reductions in the number of clerical positions in Seniority District 26, Philadelphia System General Office. In fact, as of the end of last week the junior clerk working a position not requiring stenography or typing skills, had a seniority date of December 22, 1969.

"You are one of a number of Seniority District 26 clerks who have considerably less seniority in this district but, because of appointment to an Appendix 1 (PEP) position, you have continued to work as the exercise of seniority rules are not applicable to your position.

The Brotherhood of Railway, Airline and Steamship Clerks has requested that the PEP positions held by these junior employees be re-posted under Rule 2 so that senior active employees now holding fully covered positions in District 26 can apply for such positions. If they possess the necessary fitness and ability these employees will be appointed to the PEP positions, thereby opening their bid and bump positions to the more senior furloughed employees. Based on the equity involved, the Company has agreed to this re-posting.

Therefore, on April 16, 1987, your position will be re-posted. If there is a senior applicant possessing the required fitness and ability, you will be replaced on or after April 29, 1987. If, of course, there is no available replacement, you will not be affected. In either event, you will be advised as promptly as possible.

Both the Company and the Brotherhood regret the necessity of taking this action and trust you will understand the reason therefor."

Approximately one week later, on April 13, 1987, Claimants sent to the Carrier and the Organization a letter of exception to the joint action of the Parties, contending that reposting of their jobs was "...improper, and violates the collective bargaining agreement." Even if one assumed, arguendo, that this was an inartfully filed claim under the Agreement, Carrier would have had sixty (60) days to respond in writing. Less than ten (10) days later, however, the attorney for the Claimants notified the Executive Secretary of the NRAB of their intent to file an ex parte submission with the Board.

There is some dispute concerning whether Carrier properly was served by Claimants with the April 22, 1987, Notice of Intent, as required by Circular No. 1. Carrier never did file an ex parte submission, other than a one-page letter urging dismissal of the matter for violations of Circular No. 1 and failure of proper handling on the property. Even if we assume, arguendo, that Carrier received proper service of the April 22, 1987, Notice of Intent, the failure to file and properly appeal a Claim on the property before filing with this Board is fatal to the Claimants' position and requires dismissal of this matter. Exhaustion of the collectively bargained grievance machinery on the property is a condition precedent to proper invocation of our jurisdiction under Section 3 First of the Railway Labor Act. We have absolutely no alternative under the law, but to dismiss this Claim without comment on its merits or lack thereof.

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 10th day of August 1989.