

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTH-
WESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR. CO.;
SAN BENITO & RIO GRANDE VALLEY RY.; NEW ORLEANS,
TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR.
CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS
VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.;
ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.;
ASPHALT BELT RY. CO.; SUGARLAND RY. CO.

(Guy A. Thompson, Trustee)

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

(a) Mr. J. W. Bower forfeited his seniority rights by failing to comply
with the rules of the Clerks' Agreement following his displacement at Mart,
Texas, on October 1, 1947. Also

(b) Claim that Mr. Bower's name be removed from the seniority roster,
and that his assignment to position No. 361 at Mart, Texas, on June 26, 1948,
be cancelled. Also

(c) Claim that Mr. Earl Suttle be assigned to position No. 361 at Mart
as of June 26, 1948 and that he be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. W. Bower was assigned
to position No. 361 at Mart, Texas, on September 22, 1947 thereby establish-
ing his seniority as of that date.

On October 1, 1947 Mr. Bower was displaced by a senior employe, fol-
lowing which he did not exercise his seniority, did not file his name and
address with the proper parties and remained at Mart where the Carrier
used him two days each week to relieve (Group 1) clerical employes on
their assigned rest days and two days each week to relieve (Group 2) Train
and Engine Crew Callers on their assigned rest days. There is now pend-

one (1) positions, shall acquire seniority in the higher group effective as of the date of promotion and shall retain and continue to accumulate seniority in group two (2) or three (3)."

Notwithstanding the fact that Suttle did not on June 26, 1948 hold seniority in Group 1, while Bower did hold such seniority as of September 22, 1947, the Employees in paragraph (c) of their Statement of Claim are now for the first time contending that Suttle be assigned to the yard clerk position at Mart as of June 26, 1948 and "that he be compensated for all losses sustained". Now, approximately six months after Mr. Bower was assigned to the yard clerk position at Mart on June 26, 1948 (Carrier's Exhibit "H"—copy of which, as indicated thereon, was furnished the General Chairman) the Employees for the first time take exception thereto. In view of the circumstances as related above, together with the provisions of Rule 7 (d) quoted next above, it is quite obvious that there is no basis for the Employees' contention that the position of yard clerk at Mart be assigned to Suttle as of June 26, 1948 and that he be "compensated for all losses sustained" since that date.

As the Carrier has previously shown, it is equally obvious that there is no basis for that part of the Employees' claim that Mr. Bower be required to forfeit his seniority as a clerk on the allegation that he failed to comply with rules of the Clerks' Agreement on October 1, 1947. It has been shown (Carrier's Statement of Facts) that in the handling of this case with the Carrier the Employees contended only that Bower did not comply with Rule 19 (a) of the agreement. The foregoing record conclusively shows that Rule 19 (a) is not here involved, has no application whatever in the instant case, and accordingly could not have been and was not violated by Mr. Bower.

On more than one occasion the Board has previously recognized and ruled that seniority is a most sacred property right of the individual and in recognition of this property right has stated its reluctance to take earned seniority away from an employee without the best of reasons. We believe your Board will agree, based upon the record in this case, that there is no good reason for taking away from Mr. Bower his earned seniority established by him as of September 22, 1947. This being so it necessarily follows that this contention of the Employees be dismissed, and the claim as here presented be denied in its entirety.

As the Carrier has stated above, that part of the Employees' claim set forth in paragraph (c) of their Statement of Claim has not previously been discussed in conference or correspondence between the parties.

OPINION OF BOARD: The record shows that J. W. Bower occupied position No. 361 at Mart, Texas, his seniority date being September 22, 1947. On October 1, 1947, Bower was displaced by a senior employee. He did not thereafter exercise his seniority in the manner prescribed by the provisions of the Agreement. It is the contention of the Organization that Bower thereby lost all his seniority rights and that he was improperly assigned as a clerk on June 26, 1948, adversely to the interests of senior employees.

The Organization contends that Bower lost his seniority in failing to comply with Rule 19 (a) and (b), which provides:

"(a) Regular assigned employees affected in reduction of force shall be notified at least three (3) days in advance of the effective date reduction is to be made and employees affected will be paid up to the end of that period. When reducing forces, seniority rights shall govern. Employees whose positions are abolished may exercise their seniority over junior employees. Other employees affected may exercise their seniority in the same manner. Employees displaced whose seniority entitles them to regular positions shall exercise their seniority within ten (10) days. Employees exercising seniority by displacement must give at least 24 hours advance notice to the proper official and the employee to be displaced with a copy to Division Chairman.

(b) Employees desiring to protect their seniority rights and to avail themselves of this rule must within ten (10) days from the date actually reduced to the furloughed list, file their name and address in duplicate in writing both with the proper official (the officer authorized to bulletin and award positions) and Local Chairman and advise within ten (10) days of any change in address or forfeit all seniority rights."

It appears that there were no junior employees working at the time Bower was displaced. He therefore became a furloughed employee and, in order to protect his seniority, was required to comply with Rule 19 (a) and (b), which he did not do. By failing to comply with Rule 19, Bower lost his seniority. In a case involving this identical situation, this Board inferentially held that Bower had no seniority after October 1, 1947. Award 4278.

Carrier contends that Bower retained his seniority by virtue of Rule 14, providing:

"Employees declining promotions or declining to bid for a bulletined position shall not lose their seniority."

The difficulty with Carrier's contention is that Bower had no seniority to lose. If he had preserved his seniority by a compliance with Rule 19 (b), then, and only then, could he have recourse to Rule 14. The fact that Bower worked two days a week as an extra employee in relieving employees on two seven-day positions on their rest days, did not have the effect of preserving his seniority. When there was no regularly assigned position available to him by displacement or otherwise on October 1, 1947, Bower was required to comply with Rule 19 if he intended to retain his seniority. Carrier contends that Rule 19 is not applicable because there was no reduction of force. The point is not well taken. There was a reduction of force insofar as Bower was concerned within the meaning of the rule.

It is urged by the Carrier that a monetary claim was not made on the property. If this were true, of course, the issue would not be before this Board. The record shows, however, that on July 15, 1948, the General Chairman made such a claim in a letter to the Assistant General Manager of the Carrier. While the name of Earl Suttle was not specifically mentioned in the letter, he was included in the language making "claim for losses sustained by employees involved or affected".

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.

Serial No. 99

NATIONAL RAILROAD ADJUSTMENT BOARD THIRD DIVISION

Interpretation No. 1 to Award No. 4535

Docket CL-4526

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Gulf Coast Lines; International-Great Northern R.R. Co.; The St. Louis, Brownsville & Mexico Ry. Co.; The Beaumont, Sour Lake & Western Ry. Co.; San Antonio, Uvalde & Gulf R.R. Co.; The Orange & Northwestern R.R. Co.; Iberia, St. Mary & Eastern R.R. Co.; San Benito & Rio Grande Valley Ry. Co.; New Orleans, Texas & Mexico Ry Co.; New Iberia & Northern R.R. Co.; San Antonio Southern Ry. Co.; Houston & Brazos Valley Ry. Co.; Houston North Shore Ry. Co.; Asherton & Gulf Ry. Co.; Rio Grande City Ry. Co.; Asphalt Belt Ry. Co.; Sugarland Ry. Co. (Guy A. Thompson, Trustee)

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The question here raised involves the effect to be given the third paragraph of the claim after it was sustained by the award of this Division. The portion of the claim involved provided: "Claim that Mr. Earl Suttle be assigned to position No. 361 at Mart as of June 26, 1948 and that he be compensated for all losses sustained."

The claim concerned the seniority status of James W. Bower, the Organization contending that he had lost his seniority. The Carrier took a contrary view on the property. An appeal was taken from the decision of the superintendent to the assistant general manager, no claim for monetary loss having been made until the claim was amended on July 15, 1948, by the addition of the following paragraph: "In reviewing the file I observe that Mr. Griffith failed to make claim for losses sustained by employees involved or affected by Carrier's action, therefore, this is to advise you that the claim is amended to that extent." At this point in the proceedings, the claim was general for employees involved, no specific claim being made for Mr. Earl Suttle. The last paragraph of the award disposes of Carrier's contention that no monetary claim for Suttle was made on the property on the basis that he was included in the general provision making "claim for losses sustained by employees involved or affected." The point is that the claim for monetary losses was for that common to all employees involved or affected. No claim for special losses sustained by Earl Suttle was ever made on the property or discussed in this record prior to the making of the award by this Board. The claim for mileage for driving his automobile between Mart and Waco during the time he was improperly deprived of Position No. 361 at Mart, is a special claim involving special loss and was not within the contemplation of the claim filed and processed.

The claim for mileage was not mentioned on the property or during the pendency of the claim before this Board. The mileage driven and the value

of the use of the automobile was not established or even mentioned. It is fundamental that an award cannot properly exceed the scope of the claim when objection is made thereto. We are obliged to say that the claim for mileage for Earl Suttle was outside the scope of the claim made on the property, that it was not presented in the appeal to this Board or considered by it, and that the award consequently does not include it.

It appears that the Carrier has paid the loss of compensation sustained by Claimant Suttle. This is a full compliance with the award insofar as the monetary claim is concerned.

Referee Edward E. Carter, who sat with the Division as a member when Award No. 4535 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1950.

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Acting Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1950.