

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

---

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the terms of the Agreement between the parties, when on the 16th day of May, 1951, it assigned a seniority date of November 9, 1925 to Andy Dragoin.

2. Carrier further violated terms of the Agreement when on May 16, 1951, it placed Andy Dragoin on the position of Ticket Agent-Telegrapher, at Troy, Alabama.

3. Carrier further violated terms of the Agreement when on the 16th day of May, 1951, it removed C. P. Watson, from his regularly assigned position as Ticket Agent-Telegrapher, at Troy, Alabama.

4. Carrier further violated terms of the Agreement, when on the 16th day of May, 1951, it removed Charles D. Adams, from his regularly assigned position of Clerk-Telegrapher, at Brundidge, Alabama.

5. Carrier be required to restore C. P. Watson and Charles D. Adams to their regularly assigned positions set forth above, and in addition thereto be required to pay the said C. P. Watson and Charles D. Adams for any loss of wages and/or expenses incurred or resulting from the wrongful action of Carrier in removing them from their regularly assigned positions in violation of the Agreement.

6. All other employees adversely affected by the violative action of Carrier in designating seniority date of November 9, 1925, to Andy Dragoin, and in assigning him to position of Ticket Agent-Telegrapher, at Troy, Alabama, be paid all loss in wages sustained thereby.

**EMPLOYEES' STATEMENT OF FACTS:** There is in full force and effect an Agreement, effective November 1, 1939, between the Atlantic Coast Line Railroad Company, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Em-

The respondent carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employees' representative.

(Exhibits not reproduced).

**OPINION OF BOARD:** After the captioned case was docketed with the Board, Petitioner withdrew its opposition to the November 9, 1925, seniority date assigned Andy Dragoin, but remains to argue other alleged violative action of the Carrier which is the subject of claims 2, 3, 4 and 5.

Despite what appears to us to be a dismissal of claims 1 and 6 without prejudice to the rules of Agreement, Petitioner speaks of same as being a "conditional" elimination of that part of the claim which asserts a violation of Article 12 (d) of the Agreement when Dragoin was given his former seniority date of November 9, 1925. In this way the Employees apparently hope to keep a foot in the door to deprive Dragoin of displacement rights to a position occupied by him before being dismissed from the service, and to which his hiring date at one time attached, although now conceding the propriety of that date having been restored to him.

Petitioner's dilemma rests largely in a purported "agreement" reached between a Carrier officer and the Local Chairman. In that connection the record shows that when Dragoin's reinstatement was discussed on the property, the Local Chairman was agreeable that Dragoin's seniority should be restored but wanted him restricted in the exercise of same. It is axiomatic that before there can be agreement there must be an offer and an acceptance in terms of that offer. So, we say it is self-evident that there was no "agreement" when the record shows that Dragoin was restored to his former position contrary to what had been discussed between a Carrier officer and the Local Chairman. The Carrier should not have injected into this record the contention that an "agreement" had been entered into, when, by all known standards, none can be said to exist.

On the other hand, Petitioner, irrespective of the reason, has effectively eliminated any dispute over Dragoin's seniority date by its change of position, and, in our opinion, has thereby destroyed any validity that there may have been in the balance of its claim.

Seniority is one indicia of right to a position under the Agreement. When one has been removed from a position by Carrier imposed discipline and that decision becomes final, there has been a break in seniority which divests the employe of any further claim to his former position. But, under usual rules and practices governing in matters of discipline, reinstatement with seniority unimpaired again vests in the one who has been removed a right to be returned to his former position.

Therefore, Petitioner's withdrawal of Claim (1) removed from Board consideration the basic issue, and its contention that one or more of the incidental issues remained is without merit, now that Carrier imposed discipline has been set aside and Dragoin's seniority date no longer is in dispute.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 all claims should be and the same are hereby denied without prejudice to rules of Agreement.

#### AWARD

Claims denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 12th day of April, 1955.