

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated the Agreement, as hereinafter stipulated, when on November 8, 1955, it dismissed Clerk J. M. Lopes from the service without investigation and hearing, and

(2) That Clerk Lopes be restored to the service with a seniority date ahead of the employe accredited with a seniority date subsequent to November 8, 1955, and that he be compensated for all wage losses suffered as result of Carrier's action.

OPINION OF BOARD: At the outset we will consider argument of Carrier respecting the portion of part 1 of the claim reading,

"* * * it dismissed Clerk J. M. Lopes from the service without investigation and hearing, * * *"

Rule 29 of the applicable agreement provides that

"An employe in Groups 1 or 2 who has been in the service more than sixty (60) days, or whose application has been formally approved, * * * shall not be disciplined or dismissed without investigation and hearing. * * *"

Carrier then states:

"* * * Whether or not he ever establishes seniority, therefore, is wholly at the discretion of the Railway, since he can do so only by being awarded a bulletined position, which, in the absence of bids and applications from employes with seniority rights, the Railway has the unrestricted right to fill with an appointee of its choice. These things are mentioned to point up the utter speciousness of an argument that Mr. Lopes could have derived some benefit or pro-

tection from a formal hearing of his case. Obviously, no constructive purpose could possibly be served by conducting an investigation simply to inform one who has no right whatever under the agreement to perform work that he will not be permitted to enjoy a relationship the Railway has the sole prerogative to continue or cancel."

If Rule 29 read that any employee in Groups 1 or 2

"who has been in the service more than sixty (60) days,"

AND

"whose application has been formally approved, * * * shall not be disciplined or dismissed without investigation and hearing, * * *"

we would uphold Carrier. However, the word used is "or" which means simply that an employee—and Claimant Lopes was an employee—cannot be dismissed or disciplined without an investigation and hearing if he meets either one of two requirements:

(a) that he shall have "been in the service" as a Group 1 or 2 employee more than sixty days, OR

(b) that his application shall have been approved.

Carrier concedes on page 16 of the record that Claimant Lopes

"* * * performed his first service on April 12, 1955, and between that date and November 8, 1955, inclusive worked a total of 89 days, which work consisted of filling short vacancies in Group 1 positions * * *."

He was, therefore, a Group 1 employee.

Therefore we will hold that Claimant Lopes, having met the first of two requirements, either of which entitles him to an investigation and hearing, we will sustain part one of the claim.

Carrier's argument that

"obviously no constructive purpose could possibly be served by conducting an investigation * * *"

is of no moment. A similar argument on a like Claim was disposed of by Award 8233.

Respecting part 2 of the claim, argument is offered on behalf of Carrier

"* * * that claim that Lopes should be assigned a seniority date ahead of the employees who acquired seniority subsequent to the disapproval of his application for employment, was admittedly not handled on the property,"

and cites Circular No. 1 of this Division in support of its position that

"Obviously, we have no jurisdiction to handle a claim which the Petitioner forgot to submit and handle on the property."

We will agree with Carrier there is no showing that the above quoted portion of part 2 of the claim was handled on the property. Under Circular No. 1 of this Board we have no alternative but to refuse to consider it here.

We will, however, in view of our standing of part 1 of the claim, sustain that portion of part 2 reading

"That Clerk Lopes be restored to the service, * * *"

and direct that it be with the same status he held on November 11, 1955, the date Carrier notified him his application "is disapproved."

FINDINGS: The Third Division of the Adjustment Board, after giving the parties of 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

Part (1) of claim is sustained.

Part (2) of claim sustained only to the extent that Claimant be restored to the service, in accordance with Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1958.