

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Howard A. Johnson, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the effective agreement when it failed and refused to accord Messrs. Frank Smokovich, Thomas R. Kroll, Victor J. Siminic, Robert A. Bosk, Arnold Delvaux, Orville Olsen, Donald W. Swanson, Kenneth J. Konkel, Lester W. LaMarch, Clarence Martin, Francis Pilon, Anthony Vardian, Frank Gersich, Glen M. Meyer, Joseph Kutches, Peter Geb, Isadore Casey, Raymond J. Martineau, Stanley J. Kwarcianny, Clarence De Marse, Arthur Sundquist a seniority date as Carpenters and/or helpers as of the time their pay started as such in December, 1953 and January, 1954 and to list their names and seniority dates on the 1954 seniority rosters.

(2) The Carrier now be required to accord each of the employees named in part (1) of this claim a seniority date as Carpenter and/or helper as of the time each claimant's pay started as such in December, 1953 and January, 1954 and to list their names and seniority dates on the 1954 and subsequent seniority rosters, account of the violation referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** The claimants named in part (1) of our Statement of Claim entered the Carrier's service in December, 1953 and January, 1954 in the capacity of a B&B carpenter helper and/or a B&B carpenter and assisted in the work of repairing the Carrier's ore docks at Escanaba, Michigan on the Peninsula Division.

When the 1954 B&B seniority rosters for the above referred to Division were published and posted on or about March 1, 1954, the claimants' names and seniority dates were not shown thereon.

On or about April 15 the claimants protested the omission of their names on the above referred to rosters, requesting that each be accorded a B&B

superior and, thereafter, notify him in writing, in duplicate, of any change in address. Employees complying with this rule will be notified in the order of their seniority by their immediate superior as their services are needed and, when so notified, must return to service within seven calendar days, unless excused by proper authority, or forfeit the right to return on basis of seniority. A letter or telegram addressed to the employee at the last address filed will constitute proper notice."

The employees on behalf of whom the claim is filed in this case did not, upon being laid off in force reduction, indicate any intention or desire to retain their seniority by filing name and address, in duplicate, as required under the above quoted rule. In the absence of complying with the above rule the employees in this case, if it is assumed they had seniority, forfeited that seniority by failing to comply with the provisions of the rule. It is therefore the position of the carrier that under the provisions of the above quoted rule the claimants in this case forfeited any seniority which they might have acquired on March 20, 1954 or five days subsequent to the date on which they were laid off in reduction of forces. It is therefore the position of the carrier that no claim could possibly be in evidence in this case for any days other than the five days immediately following the date laid off, and claimants having failed to comply with the provision of Rule 11(b) any seniority which they may have acquired was terminated by failure to comply with the provisions of that rule.

It is therefore the position of the carrier first, that this Board should not proceed to hear this case unless the Brotherhood of Railway Clerks, a necessary party, is given notice of the proceeding and allowed to participate therein; second, that an interpretation of the agreements involved in this case which would sustain the claim would result in an agreement in violation of the provisions of the Railway Labor Act; third, that the intention of the parties as evidenced by the method of handling this work throughout the years, including the present agreement negotiated after the claim here is involved arose, shows that it was, is and has been recognized that ore dock laborers are entitled to the winter repair work in preference to outsiders or to any others except regular employees coming under the maintenance of way agreement who worked during the summer months under such agreement; and fourth, that claimants in this case forfeited all seniority, if they had any, when they failed to comply with the provisions of Rule 11(b) of the Maintenance of Way agreement. It is therefore the position of the carrier that this claim should be denied in its entirety.

All information contained herein, except Carrier's Exhibits "E", "F" and "G" and the reference to the conversation between the Maintenance of Way General Chairman and the Clerks' Assistant General Chairman, has previously been submitted to the employees during the course of the handling of this case on the property and is hereby made a part of the particular question here in dispute. These excepted items the carrier understands were fully within the knowledge of the employees during the handling on the property.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The record indicates that the Brotherhood of Railway and Steamship Clerks is an interested third party to this dispute between the Brotherhood of Maintenance of Way Employees and the Carrier, and that it would be adversely affected by an affirmative award. It also suggests the possibility of an affirmative award.

Under Section 3, First (j) of the Railway Labor Act, as amended, and interpretations thereof by the federal courts, notice to the interested third party is required.

**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;

That the Brotherhood of Railway and Steamship Clerks is interested in this dispute as a third party and is entitled to notice of hearing pursuant to Section 3, First (j) of the Railway Labor Act, as amended; and

That consideration of the merits should be deferred until notice is given to the interested third party.

#### AWARD

Hearing and decision on merits deferred pending due notice to the Brotherhood of Railway and Steamship Clerks to appear and be represented in this proceeding if it so desires.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1959.