

Award No. 12191
Docket No. CL-11786

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated and continues to violate provisions of the current agreement, as hereinafter stipulated, when effective May 25, 1959 the Carrier unilaterally consolidated seniority districts and seniority rosters of Group 3 employes in the Daytona Beach Ticket Office and the Daytona Beach Freight Agency, and

(2) That divided seniority rosters be issued and the Group 3 employes restored to the seniority districts established by the January 1, 1938 Agreement, and that any employe involved or affected by the consolidation of these seniority districts be compensated for any loss of earnings, the employes and their wage losses to be determined by joint check of Carrier's payroll and other records.

EMPLOYEES' STATEMENT OF FACTS: Some time during the month of May, 1959, the Ticket Agent at Daytona Beach retired. Prior to that time separate agencies were maintained for the freight office and the ticket office with an Agent for each office. When the Ticket Agent retired, instead of appointing a new Ticket Agent the Carrier placed the Freight Agent in charge of both the Ticket Agency and the Freight Agency. As reflected by Employees' Exhibit A, the Chief Operating Officer advised the General Chairman of the Brotherhood on May 22, 1959, that since the Ticket Office and the Freight Agency at Daytona Beach had been consolidated he had had a consolidated seniority roster for Group 3 employes issued, dovetailing the employes in seniority sequence.

Employees' Exhibit B is a letter from the General Chairman to the Chief Operating Officer protesting the unilateral action of the Carrier in making change in established seniority districts, requesting that divided seniority rosters be issued and the Group 3 employes restored to the seniority districts established by agreement, and that any employe involved or affected by the consolidation be compensated for any wage losses.

recently as January 1, 1958, the Stores Department and the Purchasing Department of the Railway were consolidated into one department, known as the Purchases and Stores Department, and a consolidated seniority roster was issued dovetailing the employes in seniority sequence as prescribed by Rule 22 of the Clerks' Agreement. The General Chairman and District Chairman were notified of the Railway's action by the Manager of the newly constituted Department by letter dated January 10, 1958, copy of which is attached as Carrier's Exhibit D and by reference made a part of this submission. It is undeniable that the Employes at that time recognized that the Railway's actions were in complete harmony with Rule 22 of their Agreement since they voiced no protest relative thereto. Consequently, there can be no possible support for their newly conceived idea that before such consolidations can be made they must be preceded by negotiation and agreement.

For the reasons stated the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Railway have been discussed with the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim in the instant case consists of two parts the second of which states:

"(2) That divided seniority rosters be issued and the Group 3 employes restored to the seniority districts established by the January 1, 1938 Agreement, and that any employe involved or affected by the consolidation of these seniority districts be compensated for any loss of earnings, the employes and their wage losses to be determined by joint check of the Carrier's payroll and other records."

Initially the Carrier takes the position that the claim as stated is defective under the provisions of Section 1 (a) of Article V of the National Agreement of August 21, 1954 in that it lacks specificity. Section 1 (a) of Article V requires that:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved * * *."

The quotation in "(2)" supra containing as it does the request that "* * * any employe involved or affected * * *" appears on its face to be vague and ambiguous. While the requirements of Article V that "All claims * * * must be presented in writing by or on behalf of the employe involved * * *" might be satisfied by enumerating the payroll number of the employes involved or by some other equally clear specification it cannot be said that the claim as presented "* * * any employe involved or affected" has been set forth with the particularity required by the said Article V (a).

In this connection the Petitioner urges that at the time the instant claim was filed it was not yet known which employes would be affected by the Carrier's action and therefore the claim had to be filed in the form employed.

The Board views this explanation as unsatisfactory. If the Petitioner knew its claim was vulnerable as filed the burden was on it to present the said claim under circumstances which would satisfy the requirements of particularity required by Article V.

There are many recent cases decided by the Third Division dismissing claims because of Petitioner's failure to comply with Article V of which the following, among many others, so hold: Awards 11499, 11229, 11230, 11038, 11066 and 11284.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 claim, as presented, does not satisfy the requirements of Article V, 1 (a) of the National Agreement of August 21, 1954.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1964.