

Award No. 12969

Docket No. CL-12562

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, 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 (GL-4953) that:

1. The Carrier violated Sections 4, 7 (a) and 13 of the Memorandum of Agreement effective March 1, 1959, in failing to provide benefits stipulated therein to Mrs. Ruby K. Hood, Mrs. Ruby Richardson and Mrs. Edna H. Sellers when Mrs. Hood was displaced by Mr. L. E. Thomas effective April 18, 1960 and the subsequent displacement on the same date of Mrs. Richardson and Mrs. Sellers, and that:

2. The Carrier be required to compensate the claimants for all monetary losses in accordance with the provisions of the Memorandum of Agreement of March 1, 1959.

EMPLOYEES' STATEMENT OF FACTS: Mr. L. E. Thomas was employed as Assistant Chief Clerk, an excepted position, in the Car Service Bureau for many years and his duties consisted of extending mileage and per diem on freight cars, making mileage and per diem monthly reports of foreign line cars and reporting to the respective railroads. During the month of August 1959 the work he had been performing was transferred to the Machine Accounting Bureau and Mr. Thomas was appointed to position of Traveling Auditor under jurisdiction of the Auditor of Disbursements.

On July 1, 1959, the duties of Per Diem Clerk, to which Mrs. Ruby K. Hood was assigned, were transferred to the Machine Accounting Bureau and while she was given no official notice of this transfer of work she remained in the Car Service Bureau performing other duties, with the assumption that she was being retained in the service at the same rate of pay in accordance with the provisions of Section 4 of the March 1, 1959, Memorandum of Agreement.

The position of Traveling Auditor to which Mr. Thomas had been appointed was discontinued and he was permitted to displace Mrs. Hood effective April 18, 1960.

Machine Accounting Bureau on September 1, 1959, the date that he was promoted to the official position, and at that time he had exercised his seniority by displacing Claimant Ruby K. Hood, she would have been entitled to the guarantee provided by the March 1, 1959 Memorandum of Agreement as well as other employees affected by the exercise of her seniority rights. This, of course, was a fact if those conditions had been present but, since the circumstances in the instant dispute were entirely different and were as depicted hereinabove, the Employees cannot substantiate their claim on circumstances which did not exist and which are entirely unrelated to this dispute.

The claim must be denied since, as conclusively shown hereinabove, the claimants were affected by fluctuations in volume of employment brought about by economic conditions and were not affected by the transfer of work as defined and provided in the March 1, 1959 Memorandum of Agreement.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the displacement by Mr. Thomas, of Mrs. Ruby Hood and the subsequent displacement of Mrs. Richardson and Mrs. Sellers, on April 18, 1960. The Agreement involved, gave to the Carrier the right to transfer work from other seniority districts into the machine accounting bureau seniority district. It also gave to the employees a guarantee of employment, to the extent of their length of service not exceeding four years, at the rate of pay equal to the basic daily rate they were receiving immediately prior to being affected as a result of the work transferred.

The question involved in this claim, is whether or not the work performed by Mr. Thomas was actually transferred into the machine accounting bureau seniority district. The organization maintains that such is the case. The Carrier alleges that the Claimants were not adversely affected as a consequence of work being transferred to the machine accounting bureau, but instead, solely by the abolition of the subordinate official position of traveling auditor in the office of the auditor of disbursements, as a result of decreases in the volume of the railway's traffic and revenues. They further urge that Thomas' exercise of seniority as a result of the abolition of the position, had no relationship to the transfer of work to the machine accounting bureau.

It is the opinion of this Board that the record indicates that the work in question was actually transferred into the machine accounting bureau and that these displacements were the result of this action and not the result of the abolition of Mr. Thomas' subsequent position.

The Board is of the opinion that the claim should be sustained as to Mrs. Hood and Mrs. Richardson. In regard to Mrs. Sellers, it is our opinion that she is entitled to compensation only until May 2, 1960, due to the fact that she could not have remained in service after that date regardless of the situation existing in the instant claim.

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 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 as per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1964.