

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company that:

(a) The Carrier violated and continues to violate the Agreement of July 1, 1950, when it refused to accept the bid of J. R. Estes, Jr., on the job as Traveling Signal Maintainer shown under Bulletin J-4-62 of January 20, 1962.

(b) J. R. Estes, Jr., be paid for all time lost beginning February 1, 1962, and continuing until such time as this violation is corrected. Estes has since bid on a like job as Traveling Signal Maintainer with headquarters at Columbus, Ga., and was denied this job also. [Carrier's File: Docket SIG 9135]

EMPLOYEES' STATEMENT OF FACTS: This dispute originated when Carrier refused to accept the bid of J. R. Estes, Jr., for a Traveling Signal Maintainer position, Macon, Georgia, as advertised on Bulletin J-4-62 of January 20, 1962. However, to understand what this case is all about, it is necessary to understand events that transpired several years ago.

Prior to July 1, 1958, Mr. Estes, with a seniority date in the mechanic's class of October 1, 1923, held a position of Relay Repairman at Columbus, Georgia, where he and his family maintain their residence. That position was abolished July 1, 1958. Mr. Estes is also this Brotherhood's General Chairman, and has been for a number of years, and there is evidence before this Board, in Docket SG-13084, that indicates the Carrier abolished the Relay Repairman position because of Mr. Estes' activities as a representative of this Brotherhood.

After the abolishment of the Relay Repairman position in July, 1958 Mr. Estes bid on and was awarded a position as Traveling Signal Maintainer at Macon, Georgia.

as alleged. We again reiterate as we have said many times before, the burden of proof is upon the party making the claim, and where competent proof is lacking a sustaining award is improper. * * *.”

“AWARD

“Claim denied.”

Third Division Award 6379 (Kelliher):

“The Petitioner has failed to sustain its burden of proof to show a contract violation.”

“AWARD

“Claim denied.”

Third Division Award 6378 (Kelliher):

“Based upon an analysis of all the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied.”

“AWARD

“Claim denied.”

Third Division Award 5418 (Parker):

“* * * Under our decisions (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and where that burden is not met, a denial Award is required for failure of proof.”

“AWARD

“Claim denied.”

And there are many other awards of the Board on this point, too numerous to mention.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to dismiss or deny this baseless claim in its entirety.

OPINION OF BOARD: Carrier moves that we dismiss the Claim for lack of jurisdiction because no conference was held with “the chief operating officer of the carrier designated to handle such disputes.”

The record shows, at the second stage of handling the dispute on the property, representatives of Carrier and Signalmen, authorized to confer, considered the Claim in conference.

Section 2 Second of the Railway Labor Act mandates “conference.” The use of the singular may not be expanded to the plural by decision of this Board. Had Congress intended to mandate conferences, it could easily have done so. **Contra**, Award No. 12499.

We caution that conferences at each stage of dispute procedure may be an indispensable condition precedent to our jurisdiction, unless waived by deed, when it has been proven, by facts, to be an integral of the "usual manner" of handling disputes on the property. Section 3. First (i) of the Act. No such proof is found in this record. We may not presume.

For the foregoing reasons, we dismiss Carrier's motion addressed to our jurisdiction.

We proceed to consideration of the Claim on its merits.

Claimant's position of Traveling Signal Maintainer was abolished on September 16, 1960. Signalmen state that under Rule 38 of the Agreement, Claimant "was required to displace either the **junior** man in construction, or the **junior** man in maintenance." He, however, asserted that because of a back condition he was physically unable to perform the duties of those positions; and, he wrote Carrier:

"Under the conditions I wish to assert my displacement rights on the job as signal maintainer at Opelika, Ala. and defer reporting for work on this job until such time as I am physically able to hold the one man job or until such time as I can bid in a job which I can perform."

Carrier, then, agreed to extend the time limit for exercise of seniority rights, under Rule 39, to include a physical examination and report of Carrier's Chief Surgeon.

After the examination, the Chief Surgeon reported that Claimant was physically fit for duty. Thereupon, Carrier informed Claimant on October 4, 1960, that the time limit extension would be terminated on October 14, 1960. When Claimant failed to report by the latter date, Carrier took the position that Claimant had terminated his employee relationship; and, it struck his name from the seniority roster. Whereupon, Claim — not the instant one — was filed on behalf of Claimant for restoration of his seniority rights. At or about the same time Claimant filed application with the Railroad Retirement Board for a disability annuity. That Board, in October 1961, found Claimant was **permanently** disabled to perform work in his regular occupation, i. e., as signalman; and, granted him a disability annuity retroactively effective as of the 17th day of September, 1960, which was the day following the date of abolishment of his position.

In Award No. 11517, dated the 14th of June 1963, we held that Carrier did not violate the Agreement when it struck Claimant's name from the seniority roster; but, we awarded restoration of his seniority rights.

In the instant case, Claimant, while enjoying the status and emoluments of the finding of the Railroad Retirement Board that he was **permanently** disabled, filed a bid for a Traveling Signal Maintainers position at Macon, Georgia, bulletined on January 20, 1962 — about a year and a half before issuance of our Award No. 11517 — and — about three months after the Railroad Retirement Board found Claimant to be **permanently** disabled to perform work in his regular occupation. Carrier on the basis of its position made known after October 14, 1960, that Claimant had, by operation of the Agreement, forfeited his seniority rights — a position which we later found in Award No. 11517 did not violate the Agreement — rejected Claimant's bid. Signalmen say the bid should have been honored; Claimant should have

been assigned the position; and, Claimant should be made whole for any loss which he suffered because of the rejection of the bid.

We find no necessity to relate the instant Claim, on its merits, to Award No. 11517. Inasmuch as Claimant initiated process of the Railroad Retirement Board that led to a finding, by that Board, that he was **permanently** disabled, beginning September 17, 1960, the said finding, being known to the parties, was binding upon both Claimant and Carrier until set aside or modified by the Railroad Retirement Board.

We will deny the 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of December 1965.