

Award No. 14411

Docket No. CL-15378

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

GEORGIA & FLORIDA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5686) that:

(1) The carrier violated and continues to violate the rules of the Special Agreement of June 13, 1963 when it refused and continues to refuse to allow Claimants N. A. Hull, Accountant, and H. M. Walker, Head Statistical and Freight Clerk, Georgia & Florida Railway Company employes at Augusta, Georgia General Offices to avail themselves of their options to accept lump sum settlements under the provisions of that Agreement; and

(2) Accountant N. A. Hull and Head Statistical Freight Clerk H. M. Walker, Augusta, Georgia General Offices shall now be paid the lump sum settlements as provided for in said Agreement.

EMPLOYEES' STATEMENT OF FACTS: As result of Finance Docket No. 21974, wherein the Interstate Commerce Commission approved the purchase by the Southern Railway Company (or its assignee) of the Georgia & Florida Railroad, the General Chairmen representing all crafts of employes covered by their respective labor organization's agreement, signed an Agreement with President J. P. Belvin of the newly organized Georgia & Florida Railway Company, which Agreement provided for the protective conditions for such employes as was recommended in I.C.C. Finance Docket No. 21974. Copy of this Agreement which is self-explanatory is hereto attached and identified as Employees' Exhibit No. 1.

Subsequent to the execution of the above mentioned Agreement, the General Chairman held a conference with Director of Personnel E. L. Cartrett, the highest officer designated by the Georgia & Florida Railway Company to handle claims and grievances under our Agreement. As result of this conference, understanding was reached therein that the General Chairman would put out a letter outlining the provisions of the Agreement of June 13, 1963 and the purpose of this letter was to give the employes affected their choice of settlements as outlined therein and copy of this form letter was sent to all employes of the old Georgia & Florida Railroad which was reorganized as the Georgia & Florida Railway Company. Copies of these form letters which

General Chairman Gregg on August 15, 1963 obviously has been abandoned and is not now a part of the claim here before the Third Division.)

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim arises out of an Agreement entered into between employees of the Georgia and Florida Railroad and the Georgia and Florida Railway Company on June 13, 1963. This Agreement is set forth and discussed in Award No. 14410 involving the same parties and insofar as it is applicable that award will be made a part of this Opinion by reference.

Claimants Hull and Walker, in the instant case, until April 23, 1963, filled positions of Accountant and Head Statistical and Freight Clerk, respectively, at the General Offices of the Georgia and Florida Railroad at Augusta, Georgia. Effective with the close of business on that date, those positions, along with nine other positions in the Accounting Department at Augusta, Georgia, were abolished. It was on this date that the United States District Court directed the Receiver of the Georgia and Florida Railroad to take immediate steps to liquidate the Railroad. This force reduction was then made in accordance with the effective Agreement between the Organization and the Carrier. On the abolishment of his position at Augusta, Claimant Hull's seniority entitled him to exercise a displacement right on the position of Chief Clerk at Carrier's Nashville, Georgia, Agency. He wrote this Carrier's Director of Personnel that he was unable to exercise his seniority on the job available at Nashville and away from Augusta for the reason that at his age he did not think he was physically able to carry on the work at Nashville and, further that as his home was in Augusta it would be a sacrifice on his part should he take an out of town job. He made a claim for a lump sum settlement under the June 13, 1963, Agreement submitting doctor's statements in support of his contention that he was physically unable to exercise his seniority.

As to Claimant Walker, when Claimant Hull failed to exercise his seniority right on the Chief Clerk's position at Nashville, Claimant Walker had seniority to exercise a displacement right on the position at Nashville. He, likewise, notified Carrier's Director of Personnel that he would be unable to exercise his seniority on the job available at Nashville due to his physical condition and financial obligation at home in Augusta. He made claim for a lump sum settlement under the June 13, 1963, and also furnished medical statements from doctors.

Carrier asserts that both of these Claimants were advised by Carrier's representatives that they should have some made effort to fill the Clerks' position at Nashville; that if they did not do so they would be reduced to a furloughed status under Rule 14 of the effective agreement which provides that employees who do not assert their displacement rights within the time prescribed by the Agreement will be considered as "furloughed." Carrier contends that by reason thereof Claimants were deprived of employment by their own conduct and not "as a result of the work being transferred to the Southern Railway Company or any railroad under its control (other than the Georgia and Florida Railway Company)."

It must be borne in mind that the United States District Court had on April 23, 1963, directed the liquidation of the Florida and Georgia Railroad due to the fact that the Georgia and Florida Railway, after the Interstate Commerce Commission had issued its Report and Order, Finance Docket No. 21974

approving the sale of the Florida and Georgia Railroad, and imposing the "Northwestern conditions," advised the Receiver that those conditions were not satisfactory and that the transaction would not be consummated on those conditions. It was not until after the Employees' Protection Agreement was reached on June 13, 1963, that the Carrier consummated the sale and took over the operation of the railroad on July 1, 1963. But for the Agreement of June 13, 1963, we may rightfully conclude, the Georgia and Florida Railroad would have been liquidated and there would have been no protection for any of its employees.

Consequently, the Agreement of June 13, 1963, must be strictly construed. Neither sympathy for these older employees who had been deprived of their employment nor equitable considerations can enter into our deliberations. Under the facts and circumstances of this case there is no proof whatever that either of the employees involved was deprived of his employment by the transfer of his position or work to the Southern Railway or any of its subsidiaries as provided for in the Agreement as a condition precedent to the recovery of a lump sum settlement. The Board concludes that the Claim must be denied.

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; and

The Agreement of June 13, 1963, has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.