Award No. 14863
Docket No. MW-15762

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it removed Mr. J. I. Sheffield's name from the Track Foreman's and the Assistant Foreman's seniority rosters which were revised in January, 1965, and when it subsequently failed and refused to restore his name thereto. (System File No. C-5 (FEC) J. I. Sheffield.)

(2) The Carrier be required to restore Mr. J. I. Sheffield's name to the Track Foreman's and Assistant Track Foreman's seniority roster.

EMPLOYES' STATEMENT OF FACTS: Following an investigation held on January 21, 1963, the claimant was dismissed from the Carrier's service on January 28, 1963, because he was allegedly responsible for creating an unsafe track condition. At the time of his dismissal from the Carrier's service, the claimant had served the Carrier for a period of almost 40 years. Inasmuch as the claimant was innocent of the charges for which he was dismissed, a claim was timely and properly presented and handled.

The General Chairman received a letter reading:

"FLORIDA EAST COAST RAILWAY COMPANY

St. Augustine, Florida
June 13, 1963
2-26

Mr. C. L. Winstead, General Chairman
Brotherhood of Maintenance of Way Employes
Room 502
The 218 West Church Street Building
Jacksonville 2, Florida

Dear Sir:

At our conference on Monday, June 10, 1963, at which you were accompanied by Assistant General Chairman J. C. Goodson, we discussed, on appeal, the decision of Superintendent M. M. Parker in

(e) All claims of the Railway against employes for overpayments shall be barred unless the Railway shall give notice of such overpayments to the employe involved within sixty (60) calendar days from the date of making such overpayment.

(f) The handling of all claims shall be in accordance with provisions of Rule 11, except as otherwise provided in this rule."

"RULE 26. SENIORITY ROSTERS

(a) Seniority rosters of employes of each sub-department will be separately compiled, as provided in Rule 3, and will show the names and occupations of the employes, dates of entering the service of the sub-department and seniority dates.

(b) Copies of the rosters will be furnished to the General Chairman and Local Chairman and will also be posted at points accessible for inspection by all employes affected.

(c) Rosters will be revised and posted during January of each year. They shall be subject to protest and correction, upon proper proof of error, for a period of sixty (60) calendar days from date issued by the Management. After such period, and subject to valid and agreed-to corrections presented during such period, the datings shown on roster shall stand and govern for that calendar year.

(d) Any dating which shall have remained unchanged on two successive rosters shall not be open to any question thereafter. This limitation becomes effective with the posting of the roster in 1942, that is to say, the January, 1943, roster will be considered as the second successive roster within the meaning of the first sentence of this section."

10. The system of discipline by reprimand, demerits and dismissal applying to employes of the Maintenance of Way Department is as defined in former Engineer Maintenance of Way's Circular No. 1, dated October 1, 1927, copy of which is attached as Carrier's Exhibit G, and by reference is made a part of this Submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of Carrier's removal of Claimant's name from seniority rosters which were revised in January, 1965. The essential facts involved in this dispute are not in issue, and Petitioner seeks to have Claimant's name restored to the Track Foreman's and Assistant Track Foreman's seniority rosters.

Carrier contends that the Board does not have jurisdiction over the dispute because it was never handled in conference as required by Section 2, Second and Sixth, and Section 3, First (i) of the Railway Labor Act, as amended. Although the record reveals that neither party sought a conference while the dispute was on the property, Carrier properly has raised the jurisdictional issue upon submission of the matters in dispute to this Board. (Awards 13097 and 13721.)

The record discloses that the entire matter has been handled through correspondence. Therefore, the precise question before the Board is whether such a conference on the property is an indispensable prerequisite to invoking this Board's jurisdiction. Although our opinions are conflicting on this jurisdictional issue, the majority of Awards have held that the holding of a conference between the parties to a dispute is an indispensable condition precedent to perfecting a petition to this Board (Awards 13120, 13571 and 13721). We find that such a requirement is in accordance with the scheme of voluntary arbitration contained in the Railway Labor Act, as amended. Had the Carrier denied a request by Petitioner for a conference, or through dilatory tactics failed to hold one when requested, a different issue would have been presented to the Board.

Accordingly, we will dismiss the Claim for lack of jurisdiction.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board is without jurisdiction over the dispute involved herein.

AWARD

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.

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