

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Don Hamilton, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION****FLORIDA EAST COAST RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employes Union on the Florida East Coast Railway, that:

1. Carrier violated the agreement between the parties when it notified J. W. Willis under date of November 12, 1964; W. B. Honrath under date of November 11, 1964, and P. E. Myers under date of November 12, 1964, that they had forfeited their seniority and severed their employment relationship with the company due to failure to comply with Rule 25 (d) of the schedule agreement.

2. Carrier shall restore J. W. Willis, W. B. Honrath and P. E. Myers to their rightful places on the seniority list for the Southern Zone of Florida East Coast Railway Company.

EMPLOYEES' STATEMENT OF FACTS: On January 16, 1963, eleven co-operating organizations of non-operating railway employes due to being unable to negotiate or mediate a satisfactory settlement of the 1961 Wage and Rules Movement with the Florida East Coast Railway Company issued a strike call to their members to begin 6:00 A. M., January 23, 1963. On the same day the Management Committee of the Florida East Coast issued notice to all employes coming under the scope of 16 craft organizations, including the Transportation-Communication Employes Union (formerly The Order of Railroad Telegraphers) that as a result of anticipated strike action, if the strike began as scheduled, all positions coming within the scope of craft agreements would be abolished effective at 6:01 A. M., January 23, 1963 after commencement of the strike. TCU Exhibit 1.

The strike did begin as scheduled, and all positions coming under the scope of the various agreements, including the one with the Transportation-Communication Employes Union, were abolished. This was the only notice given, no employes under the Transportation-Communication Employes Union Agreement were notified that they were cut off under the appropriate rule of the Agreement, all jobs were abolished and the railroad temporarily ceased operating.

After eleven days due to an injunction issued by a Federal Judge requiring the employes of the Jacksonville Terminal Company, Atlantic Coast Line Railroad, Seaboard Air Line Railway, and Southern Railway to handle traffic moving to and from the Florida East Coast Railway, limited carload freight service was resumed and this has increased until the railway at this date claims they are handling normal carload freight.

Florida. These bulletins have been returned by the Post Office Department because of incorrect address. Therefore, in accordance with the above quoted Agreement provision, you have forfeited your seniority and severed your employment relationship with the Florida East Coast Railway Company as a telegrapher.

"Yours very truly,

/s/ E. H. Hall
E. H. Hall
Chief Train Dispatcher.

EHH/pfb

cc: Mr. I. H. Hamilton, General Chairman
The Order of Railroad Telegraphers
244 South Circle Avenue
Eau Gallie, Florida."

(The letters to Willis, Honrath and Myers, quoted above, are attached hereto as Carrier's Exhibits "Q", "R" and "S", and by reference are made a part hereof.)

The certified letter to Willis and the letter to Myers were returned by the Post Office Department undelivered, and the certified letter to Mr. Honrath was delivered, as evidenced by return receipt, to a Mr. Sigrid C. German.

7. The disputes here involved were progressed on the property in the usual manner, conference discussion thereon being held by Vice President and Director of Personnel R. W. Wyckoff, final appeals officer of the Railway, with General Chairman I. E. Hamilton of the Transportation-Communications Employees Union, on February 26, 1965, a copy of the transcript of that discussion being attached hereto as Carrier's Exhibit "T", and by reference being made a part of this submission. (Exhibits not reproduced)

OPINION OF BOARD: A strike call was given to the members of eleven cooperating organizations of non-operating railway employes to be effective at 6:00 A. M., January 23, 1963. The Management Committee abolished all positions within the scope of the craft agreements effective at 6:01 A. M., January 23, 1963.

Around the middle of November 1964, the Carrier wrote to each of the three Claimants advising them that letters which had been sent to them containing bulletins had been returned. The Claimants were further advised that because of a violation of Rule 25 (d), they had forfeited their seniority and severed their employment relationship with the Florida East Coast Railway Company.

The Carrier urges that Award 13127 applies and controls in this case. We have examined this award and conclude that it stands for the proposition that "the relationship between an employe engaged in a legal strike and his employer continues to be employer-employe."

In applying this principle to this case we must first find a violation of Rule 25 (d) by the employes, before we can enforce the action of the employer incident thereto.

Rule 25 (d) speaks to a reduction in force under specific circumstances. These employes were on strike, and they did not come under the clear provisions of Rule 25 (d). The fact that they were on strike does not abrogate their responsibilities and duties, under the employer-employe relationship, but nei-

ther does it give the Carrier the right to unilaterally invoke an otherwise in-applicable provision of the agreement.

We believe that the basic elements prerequisite to the invoking of Rule 25 (d) are missing in this case, and therefore, the Carrier erred when it attempted to penalize the Claimants for failure to comply with the technical provisions incident thereto.

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 has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1966.