

Award No. 16075
Docket No. TE-16899

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

FLORIDA EAST COAST RAILWAY COMPANY

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

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when it notified W. F. Lawton under date of January 11, 1966 that he had forfeited his seniority and severed his employment relationship with the Company due to failure to comply with Rule 25 (d) of the Schedule Agreement.

2. Carrier shall restore W. F. Lawton to his rightful place on the seniority list.

CLAIM NO. 2

1. (a) Carrier violated the agreement between the parties when it notified W. A. Scholtes under date of August 3, 1965, that he had forfeited his seniority and severed his employment relationship with the Railway due to failure to comply with Rule 25 (d) of the Schedule Agreement and,

(b) Carrier violated the agreement between the parties when it issued Seniority Roster of January, 1966, for the Fourth and Fifth Districts (Southern District) and failed to show the name of W. A. Scholtes thereon, with his rightful seniority date of January 9, 1956.

2. Carrier shall restore W. A. Scholtes to his rightful place with respect to seniority date and standing on the seniority list for the Southern District of Florida East Coast Railway Company.

EMPLOYEES' STATEMENT OF FACTS: The issues involved in this dispute have previously been submitted to your Board and position of the

awarding to the successful applicants Northern Zone Relief Assignment No. 1 and Positions Nos. 7 and 11, clerk-operators at New Smyrna Beach, Florida, advertised in Bulletins CTD-73, 74 and 75, dated December 13, 1965 (see Carrier's Exhibit H), were mailed to Mr. W. F. Lawton at Box 236, Bunnell, Florida, his last posted address, but were returned to the Railway, undelivered, by U.S. Post Office Department on January 8, 1966, marked "Unclaimed." The envelope in which these bulletins had been forwarded also indicated that someone had attempted to forward these communications to Mr. Lawton at Opa-Locka, Florida. (Photographic copy of this envelope is attached hereto as Carrier's Exhibit I, and by reference is made a part hereof.)

9. Since by the return of the bulletins which had been mailed to Mr. Lawton on December 27, 1965, it was obvious that he had failed to comply with the provisions of Rule 25(d), which is quoted at page 6 of this Submission, the following letter was addressed to Mr. Lawton over the signature of Chief Train Dispatcher E. H. Hall under date of January 11, 1966, by Certified Mail-Return Receipt Requested:

"Rule 25(d) of the Schedule Agreement with the Transportation-Communication Employees Union provides that an employee laid off in reduction of forces:

' . . . who desires to protect his seniority rights must within five (5) days from the date laid off file his name and address, in duplicate, in writing, with the officer notifying him of his lay off, and advise him promptly of any change in address or forfeit his seniority rights.'

On December 27, 1965, bulletins were mailed to you at your last posted address, namely, Box 236, Bunnell, Florida. These bulletins, after having been forwarded by someone to Opa Locka, Florida, were returned by the Post Office Department, undelivered, marked 'Unclaimed.' Since you have failed to comply with the above quoted agreement provision, you have forfeited your seniority and severed your employment relationship with the Florida East Coast Railway Company."

(Photographic copy of Mr. Hall's letter of January 11, 1966, is attached hereto as Carrier's Exhibit J, and by reference is made a part hereof.)

10. 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 appeal officer of the Railway, and Vice President O. C. Jones of the Transportation-Communication Employees Union on April 1, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD:

CLAIM NO. 1 - LAWTON

An examination of the record discloses that the issues involved in this claim are identical with those that were previously presented to this Board in our Award 15021.

This claim will be sustained on the basis of our Award 15021, which involved the same issues, was between the same parties, and with a similar factual situation.

We do not find Award 15021 to be palpably erroneous.

CLAIM NO. 2 - SCHOLTES

This claim presents a different situation.

In this claim we are called upon to interpret the provisions of Rules 17, 25 and 23 of the Agreement between the parties.

Those portions of the rules concerning us are as follows:

"RULE 17.

SENIORITY ROSTERS

(a) Seniority rosters will be revised in January and July of each year. Such rosters shall be open to protest and correction, upon proof of error, for a period of ninety (90) days from the date of roster. Employees laid off in force reduction and employees on leave of absence will have ninety (90) days from date of their return to service to make protest.

(c) The General Chairman will be furnished copies of all rosters and copies will be posted in all offices where employees covered by this agreement are worked."

"RULE 25.

REDUCTION IN FORCE

(d) When necessary to reduce forces in accordance with paragraph (c) of this Rule, employees will be laid off in the reverse order of their seniority, the junior employee to be laid off first. An employee so laid off, who desires to protect his seniority rights, must, within five (5) days from the date laid off, file his name and address, in duplicate, in writing, with the officer notifying him of his lay-off, and advise him promptly of any change in address, or forfeit his seniority rights. The officer will sign and return to the employee as his receipt one copy of the address, or change of address, so filed. When forces are increased on the extra list, employees will be recalled to the service in the order of their seniority, and failing to return within fifteen (15) days after being notified (by mail or telegram sent to the last address given), or give satisfactory reason for not doing so, will forfeit their seniority rights and be considered out of the service."

The employees represented by Eleven Cooperating Non-Operating Labor Organizations called a strike against the Carrier, effective as of 6:00 A.M., January 23, 1963. By reason of the strike call, the Management Committee of the Carrier abolished all jobs effective at 6:01 A.M., January 23, 1963, by notice addressed to the Eleven Cooperating Non-Operating Labor Organizations under date of January 16, 1963.

Prior to the abolishing of all jobs at 6:00 A.M. on January 23, 1963, Scholtes, who had established seniority as a telegrapher on the Carrier's 4th and 5th Districts on January 9, 1956, was employed as ticket-clerk operator at Hollywood, Florida. The last address furnished to the Carrier by Scholtes was No. 717 S.E. 16th Street, Fort Lauderdale, Florida.

Under date of July 27, 1965, Bulletin No. CTD-30 was issued by Carrier advertising position of ticket clerk-operator at North Miami, Florida.

Under date of July 28, 1965, Bulletin No. CTD-31 was issued by the Carrier cancelling Bulletin No. CTD-30, dated July 27, 1965.

Both Bulletins bearing Nos. CTD-30 and CTD-31 were mailed to Claimant Scholtes at his last posted address with Carrier, to-wit, No. 717 S.E. 16th Street, Fort Lauderdale, Florida. The envelopes in which these bulletins were contained and forwarded to Claimant Scholtes were returned by the U.S. Post Office Department on August 2, 1965, each being marked with the notation "unclaimed" and "Don't live here." It is evident from the notations on the returned envelopes that Claimant Scholtes failed to comply with the provisions of Rule 25(d) in that he did not within the time provided by the provisions of Rule 25(d) file with the Carrier any change in his address, i.e., within 5 days after being laid off.

Under date of August 3, 1965, the Carrier addressed a letter to Claimant Scholtes, by Certified Mail-Return Receipt Requested, as follows:

"New Smyrna Beach, Florida
August 3, 1965
26

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. W. A. Scholtes
717 S.E. 16th Street
Fort Lauderdale, Florida

Dear Sir:

Rule 25 (d) of the Schedule Agreement with the Order of Railroad Telegraphers provides, in pertinent part, that:

'. . . an employe so laid off, who desires to protect his seniority rights must, within five (5) days from the date laid off, file his name and address, in duplicate, in writing . . . and advise him promptly of any change in address, or forfeit his seniority rights. . . .'

On July 27 and 28, 1965, bulletins were forwarded to you at your last posted address, i.e., 717 S.E. 16th Street, Fort Lauderdale, Florida. These bulletins have been returned by the Post Office Department marked 'Unclaimed', and also bearing pencil notation, 'Don't live here.' Therefore, in accordance with the above quoted Agreement provision, you have forfeited your seniority and sev-

ered your employment relationship with the Florida East Coast Railway Company as a Telegrapher.

Yours very truly,

/s/ E. H. Hall
Chief Train Dispatcher

EHH/y

cc: Mr. I. E. Hamilton
General Chairman"

The return receipt requested by the Carrier shows that this letter was received and signed for personally by Claimant Scholtes at Dania, Florida, on August 13, 1965.

The Carrier claims that it heard nothing further from Claimant Scholtes until a letter dated March 2, 1966, was received from Mr. I. E. Hamilton, the General Chairman of the Union. In this letter the General Chairman refers to the contents of the letter of August 3, 1965, and requests that Claimant Scholtes be restored to his rightful place on the seniority roster. The letter also denied that the General Chairman received a copy of the August 3, 1965 letter. It is significant to note that the General Chairman's letter is dated and was received approximately 7 months after the Carrier's letter of August 3, 1965.

The Carrier wrote to the General Chairman by letter dated March 4, 1966, wherein, among other things, the General Chairman was advised that his request that Claimant Scholtes be restored to the seniority roster would not be entertained or granted because of Claimant Scholtes' failure to comply with the provisions of both Rule 25 (d) and Rule 23 of the Agreement.

That portion of Rule 23 concerning us is as follows:

"RULE 23.

TIME LIMITS FOR HANDLING GRIEVANCES
OR CLAIMS

(a) Grievances shall be made in writing within sixty (60) days from the date of the occurrence on which the particular grievance is based. If not filed within said sixty (60) day period, the grievance is barred."

This Board has previously held that where the provisions of an agreement are clear and unambiguous, they must prevail even over conflicting practices. See Award 14599.

In Award 12883 (First Division), it was held:

"The carrier alone can waive the strict terms of an agreement as to limitation of time. We have no power to rewrite the contract or to assume duties reserved under it to the carrier."

See also Third Division Awards 8745, 9686, 12253, 8886.

The record discloses that although requested, the Carrier refused to waive the terms of the Agreement.

This Board has also sustained the forfeiture of seniority rights because of the failure to file or renew address pursuant to the provisions of the agreement. See Awards 9101, 5909, 4535, 3840 of this Board and Award 2129 of the Fourth Division.

At the panel discussion, the Claimant's representative maintained and vigorously argued that the provisions of Rule 17 of the Agreement should prevail in this dispute. After a careful examination of the record we find no substantial evidence to sustain such contention.

The record in this case is clear that Claimant Scholtes was duly notified of the forfeiture of his seniority rights by letter dated August 3, 1965, a letter sent by Certified Mail, and which he personally signed for on August 13, 1965; that no protest was filed in connection with the terms of the letter until March 2, 1966, a period of approximately 7 months after August 3, 1965, which is far in excess of the time limit set forth in Rule 23 (a) of the Agreement. Under the clear and unambiguous provisions of Rule 23 (a), the grievance filed on behalf of Claimant Scholtes was not timely made and is, therefore, barred.

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 as to Claim No. 1, the Carrier violated the terms of the Agreement;

That as to Claim No. 2, the claim is barred.

AWARD

Claim No. 1 is sustained.

Claim No. 2 is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1968.