



Award No. 16839
Docket No. CL-16916

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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-6184) 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 Claimant Mrs. Lorie J. Lafferman, Mail and Utility File Clerk, Georgia and Florida Railway Company employe at Augusta, Georgia General Offices to avail herself of her option to accept lump sum settlement under the provisions of that Agreement; and

(2) Mail and Utility File Clerk, Mrs. Lorie J. Lafferman, Augusta, Georgia General Offices shall now be paid the lump sum settlement as provided for in said Agreement.

EMPLOYES' 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 ICC Finance Docket No. 21974. Copy of this Agreement, which is self explanatory, is hereto attached and identified as Employes' 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 arising 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.

Commerce Commission. There is, therefore, no basis for the claim you are attempting to assert in her behalf and as advised in our conference, this claim in behalf of Mrs. Lafferman is being declined."

On May 5, 1965, the Brotherhood's General Chairman appealed the claim to Mr. L. G. Tolleson, Director of Labor Relations, who is the highest designated officer of Carrier to whom claims such as this may be appealed. The General Chairman's letter was a continued re-hash of his baseless self-serving assertions, contentions and conclusions.

Director of Labor Relations Tolleson replied to the General Chairman under date of November 5, 1965, as follows:

"Referring to your last letter of September 27, 1965, concerning 'claim' for lump-sum settlement for and in behalf of Mrs. Lorie J. Lafferman, Augusta, Georgia.

This will confirm conference held with you by my representative, Mr. J. L. Ferrell, Assistant Director of Labor Relations, in Atlanta, Georgia, on October 15, 1965, in which this matter was fully discussed. As was pointed out in conference, Mrs. Lafferman was not a regularly assigned employe of the Georgia and Florida Railroad as of the effective date of the Order of approval by the Interstate Commerce Commission. She is not entitled to any separation allowance, lump-sum or otherwise, under the provisions of the June 13, 1963 Agreement.

The assertions, contentions and conclusions set forth in your various letters concerning Mrs. Lafferman are not based on fact, and they are respectfully denied in their entirety. The 'claim' being unsupported by the Agreement is therefore declined in its entirety."

The claim for and in behalf of Mrs. Lafferman for a lump-sum settlement was declined because the circumstances involved removed her case from any possible application of the terms of the Agreement of June 13, 1963 — Carrier's Exhibit A. She clearly and obviously is not entitled to the pay demanded.

The basic agreement between the clerical employes of Carrier with the Clerks' organization is effective October 1, 1957, however, the claim here involved alleged a violation of the June 13, 1963 special agreement attached hereto as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant had seniority date of November 16, 1952 on the Georgia & Florida Railroad as a Record File Clerk. A senior employe exercised his seniority and displaced Claimant on the Record File Clerk position. As a consequence Claimant, on August 30, 1962, exercised seniority to displace a junior employe holding the position of Utility and File Clerk. On October 8, 1962, the Georgia & Florida Railroad disqualified Claimant with the concurrence of Clerks. Clerks' General Chairman, on October 12, 1962, advised the Railroad that he had requested Claimant to file her name and address as provided in Rule 14 (d) in order to protect her seniority. The Rule reads:

"(d) Employes who do not possess sufficient seniority to displace a junior employe or who do not assert their displacement rights

within the prescribed time will be considered as 'furloughed.' A list of employees furloughed under this Rule will be supplied by the Management to the Vice General Chairman and General Chairman."

She did and thereafter was carried on the seniority rosters as a furloughed employee. She, insofar as the record shows, performed no service for the Railroad Company after October 11, 1962.

In Finance Docket No. 21974 the Interstate Commerce Commission (ICC) approved the purchase of the Georgia & Florida Railroad by the Georgia & Florida Railway Company, Carrier herein.

On June 13, 1963, Clerks entered into an agreement with Carrier which *inter alia* provided for the following employee protective provisions effective upon consummation of the transaction approved by ICC.

"(a) Each regularly assigned employee of Georgia & Florida Railroad as of the effective date of the Order of approval by the Interstate Commerce Commission, who is deprived of his employment as a result of the work being transferred to the Southern Railway Company or any railroad under its control (other than the Georgia & Florida Railway Company), as set out in the Interstate Commerce Commission's report and Order, shall be paid each month for a period of four years from such effective date (or, if employed by Georgia & Florida Railroad for a lesser period, such lesser period), an allowance equal to his basic monthly wage at the effective date of the Order less any other earnings received during the period of protection. (Emphasis ours.)

* * * * *

(c) Any employee of the Georgia & Florida Railroad deprived of employment for the reasons stated in (a) above, may accept, if he desires, a lump sum settlement in lieu of the monthly allowance provided in (a) above. (Emphasis ours.)

NOTE: The lump sum settlement allowed those employees entitled thereto will be upon the following basis:

Length of Service	Separation Allowance
Less than 1 year	5 days' pay for each month in which they performed service at rate of the position to which regularly assigned on effective date of the Order.
1 year and less than 2 years	3 months' pay
2 years and less than 3 years	6 months' pay
3 years and less than 5 years	9 months' pay
5 years and over	12 months' pay"

Georgia & Florida Railway Company, Carrier herein, assumed control of Georgia & Florida Railroad on July 1, 1963.

By bulletin dated June 29, 1963, effective 11:59 P. M., June 30, 1963, all positions in the Accounting Department of Georgia & Florida Railway, not previously terminated, were abolished — this included the position from which Claimant had been displaced by a senior employee.

On August 7, 1964, Claimant who had the status of furloughed employee from October 1962 and who had been on sick leave since June 13, 1963, wrote Carrier that she was physically qualified to resume working and stood available for any job opening for which she was entitled by seniority. Note that this occurred over a year after the positions on the Georgia & Florida Railroad had been abolished. Clerks admit there was no position existing on August 7, 1964, to which Claimant could exercise seniority since all the clerical work had been transferred to the Southern Railway Company's General Offices at Atlanta, Georgia and Washington, D. C.

On February 18, 1965, Clerks filed Claim on behalf of Claimant for a lump sum payment, citing paragraph (c) of the June 13, 1963 Agreement, *supra*, in support. It was denied by Carrier with the given reason that Claimant was not a regularly assigned employee on the effective date of that agreement and, therefore, was not deprived of employment as a result of the transaction to which the agreement was related.

The pivotal issue in this case is whether Claimant was "deprived of (her) employment as a result of work being transferred to the Southern Railway or any railroad under its control." See the clause in paragraphs (a) and (c) of the June 13, 1963 Agreement, *supra*.

As of the effective date of the June 13, 1963 Agreement — July 1, 1963 — Claimant was a furloughed employee. She was not then, *de facto*, employed and had not been for sometime prior thereto. For reasons stated in Award Nos. 14410, 14411 and 14412, involving the parties herein and interpretation and application of the same agreement (June 13, 1963), we find that Claimant was not deprived of employment as a result of the transaction to which that agreement is related. We, therefore, will deny the Claim.

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

That Carrier did not violate the Agreement of June 13, 1963, in its denial of the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1968.

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