NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20098
THIRD DIVISION Docket Number CL-20178

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (formerly Transportation-Communication Employees Union)
(Florida East Coast Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and Transportation-Communication Division BRAC on the Florida East Coast Railway Company, that:

1. Carrier violated Rule 39 of the Agreement when it arbitrarily removed the name of C. T. Lucas, Jr. from its seniority roster September 12, 1969.

2. Carrier shall be required to reinstate C. T. Lucas' name to the seniority roster with all rights unimpaired.

OPINION OF BOARD: Claimant's name was removed from the seniority roster on September 12, 1969. Among other defenses, Carrier raises the threshold issue of timeliness, stating that Claimant failed to submit a claim or grievance within the mandatory sixty (60) day period, and that the claim (when ultimately filed) was not submitted to the appropriate official of the Carrier. This Board finds merit in Carrier's assertion that the sixty (60) day requirement of Rule 36(a) was ignored and we will dispose of the dispute on those grounds.

Rule 36(a) states, in pertinent part:

> "All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. . . ."

The rather detailed record before us demonstrates the following significant facts. On or about January 23, 1963, eleven cooperating Organizations of Non-Operating railway employees issued a strike call to its employees. In conjunction therewith, Carrier abolished all positions. The strike did not officially terminate until 1972.

On five occasions between 1964 and 1969, Carrier advised Claimant that he was assigned to bulletin positions in accordance with an applicable rule of the agreement, but Claimant refused to report for duty, advising that he was on a legally authorized strike. In each instance, when the position was abolished, Claimant was cautioned, by letter, to file his name and address and in each instance (until late 1969) he complied.

On August 19, 1969, claimant was advised of abolition of a position, and, as in the past, was advised as follows:

> "You are cautioned of the importance of filing your name and address in compliance with Rule 19(c) of the Clerks' Agreement if reduced to furloughed list."

Claimant did not file his name and address, and on September 12, 1969, the Carrier advised him, by Certified Mail - Return Receipt Requested:

> "This is to advise you that for your failure to file your name and address in compliance with Rule 19(c) of the Clerks' Agreement, upon being reduced to furloughed list, you have forfeited your seniority and severed your employment relationship with the Florida East Coast Railway Company."

The Claimant received the above cited letter on September 13, 1969. The Carrier received no claim or grievance until February 10, 1972, at which time it was advised that Claimant had become a full time representative of the Organization on April 1, 1964. Claimant seeks restoration to the seniority list based on Rule 39(a):

> "Duly accredited representatives of employes employed exclusively by the Organization shall be considered on leave of absence from the service of the Railway and may return to their former position or exercise seniority rights within thirty (30) days after release from such employment."

Claimant urges that Rule 39(a) is self-executing, requiring no agreement by the Carrier and not requiring notification to the carrier of the assumption of a position with the Organization.

Assuming, without deciding, the "automatic" nature of Rule 39(a) we do not concede in this case (under these particular set of circumstances) that Claimant did not, at some point in time, have a duty to advise the Carrier of his union position (or at least continue to file his name and address) in order to protect his seniority; and that point in time was not some two years and five months after he was advised that his employment relationship with the Carrier had been severed.

The voluminous record does not signify any reason why Claimant failed to advise the Carrier of his position with the Organization - which notification would assumedly have precluded the necessity of periodically filing his name and address from 1965 through 1969. Further, the record fails to explain why Claimant ceased filing his name and address in 1969, some 5 1/2 years after assuming a position with the Organization, and in effect, ignored the letter advising him of employment relationship severance. While this Board may not

engage in speculation in these regards, it may, nonetheless consider all aspects of the record. While the Organization presented well reasoned arguments on his behalf, we find that Claimants' own inaction is fatal to his claim.

The Board is of the view that the "occurrence" referred to in Rule 36(a) was on September 13, 1969, the date claimant received notification of severance, and the sixty (60) day time period commenced to run at that time. It is well established that grievance time limits are mandatory and may only be extended by agreement. See, for example, Awards 18855 (Dugan) 17977 (Dorsey) and 13942 (Dorsey). The record fails to indicate any such agreement. Nor does the fact of a prolonged labor dispute on the property aid Claimant herein. In May of 1966, the United States Supreme Court (in a decision dealing with these same parties) noted a continuing status of the collective bargaining agreement. The Claimant had available to him, in 1969, recourse to Rule 36(a). In this regard, see Awards 16075 (Perelson), 19422 (Edgett) and Second Division Award 4916 (Johnson).

Authority cited by Claimant is grounded upon different factual circumstances and is not material here.

Inasmuch as this claim is dismissed for failure to comply with Rule 36(a), we do not rule on other issues raised by the parties.

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 claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: I. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.