

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23369  
Docket Number MS-23199

John J. Mikrut, Jr., Referee

(Nicholas J. Wills  
( and  
(Arthur A. Venditti  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an ex parte submission on October 3, 1979, covering an unadjusted dispute between us and the Consolidated Rail Corporation involving the question:

Discrepancy between the seniority dates of the signalmen prior to 6/30/79 and the seniority dates posted on the most recent roster posted 6/30/79.

1. Parties: Nicholas J. Wills Employee # 262348  
Arthur A. Venditti Employee # 262155  
Consolidated Rail Corporation  
Brotherhood of Railroad Signalmen (Union)

2. Statement of Claim: Discrepancy between the seniority dates of said rosters."

OPINION OF BOARD: Petitioners A. Venditti and N. Wills were hired by Carrier on November 21, 1976, and each obtained his Maintainer status on March 7, 1977 and July 21, 1977 respectively.

On December 14, 1976, Carrier and Organization entered into an Agreement establishing an Education and Training Program for Signal Department employees hired after April 1, 1976. Said Agreement became effective January 3, 1977, but subsequent thereto the parties agreed to extend the program to include employees hired prior to the original April 1, 1976 cut-off date. Additionally, on June 21, 1978, a further agreement was reached between the parties which provided, among other things, for seniority modification for "a trainee who is promoted to a higher position out of seniority order..."

Believing that their seniority rights had been violated as a result of the enactment and application of the above cited Education and Training Program, Petitioners, on August 1, 1979, filed a written appeal with S. D. Dutrow, Manager-Labor Relations, which was denied in a letter dated October 4, 1979, and signed by Mr. Dutrow. Prior to receipt of Mr. Dutrow's response, however,

Petitioner Wills, in a letter dated August 24, 1979, contacted the First Division of the National Railroad Adjustment Board requesting assistance in this matter. Said letter was referred to the Third Division for reply and in response thereto the Executive Secretary of the Third Division advised Petitioner Wills as follows:

"(1) The rules or practices in effect on the railroad involving governing the handling of disputes between the employees and the employer must first be complied with to conform with the Railway Labor Act, as approved June 21, 1934.

(2) After the above requirement has been fulfilled, disputes may only be filed with the appropriate Division of the National Railroad Adjustment Board by complying with requirements outlined in Circular No. 1 issued October 10, 1934, copy enclosed for your information. Also enclosed is a copy of instructions for filing and sample of notice of intent."

Thereafter, in a letter dated September 3, 1979, Petitioners Wills and Venditti notified the Third Division of their intention to file an ex parte submission in this matter. Said Submission was filed by Petitioners at a hearing which was held on May 6, 1980, at which time the file was closed and the dispute was placed in line for handling by the Third Division.

Petitioners' position in this dispute is that the Education and Training Agreement which was entered into by the parties was discriminatory and, therefore, invalid and unlawful in that said Agreement modified the existing seniority system thereby enabling lesser senior employees to be placed ahead of Petitioners in their seniority ranking. According to Petitioners, as a result of the newly created seniority roster, Petitioner Venditti was improperly laid off from February 29, 1980 to April 7, 1980 and Petitioner Wills was laid off from the same beginning date until April 15, 1980. In addition, Petitioners maintain that since their respective recalls from layoff each has unsuccessfully bid on Maintainer positions which would have otherwise been available to them prior to the institution of the new seniority roster which was posted by Carrier on June 30, 1979. Furthermore, Petitioners contend that they (Petitioners) were not apprised by the Organization of their right to participate in the disputed Training Program and that such neglect further attests to Organization's improper functioning in this incident.

Continuing on, Petitioners also argue that Carrier's procedural objections to the consideration of this claim should be dismissed because: (1) Petitioners did attempt to process their grievance through the negotiated grievance procedure to the best of their ability but "were given short shrift by both the Representative and the Carrier"; and (2) despite Carrier's con-

tention to the contrary, Carrier was well apprised of the specifics of Petitioners' claim including the specific remedy which was being requested.

Carrier's basic position in this matter is that insofar as Petitioners' Notice "...has not been progressed to the Board as required by the Railway Labor Act and the applicable collectively bargained agreement," the National Railroad Adjustment Board Third Division has no jurisdiction in this matter. In this regard Carrier specifically contends that the dispute which has been submitted to the Board "...has never been properly handled on the property nor have Claimants or anyone acting in their behalf progressed any claim up to and including the Senior Director-Labor Relations, Carrier's final appeals officer, as required by the applicable Agreement provisions and the specific requirements of Section 3, First (i) of the Railway Labor Act" (First Division Awards 20741, 6798, 13991, 15235, 16928, 17464, 17698, 17836, 18254, 19352, 20216, 20741 and 20792-20796; Second Division Awards 1404, 6172, 6520 and 6555; Third Division Awards 15075, 18364, 19564 and 20574; and Fourth Division Awards 3320 and 1217).

In addition to the foregoing, Carrier also maintains that Petitioner's Claim is further defective, in and of itself, because said claim: (1) is of a vague and unspecific nature; (2) contains issues which are beyond the jurisdiction of the Board; (3) does not contain a request for any specific remedy sought by Petitioners; and (4) Petitioners have named the Brotherhood of Railroad Signalmen as an adversary party to this dispute and under Section 3, First (i) of the Railway Labor Act "only disputes which have arisen between an 'employee' and a 'carrier' are justiciable," thus the "Board is not empowered to decide a dispute between an employee and his union."

As its last major area of argumentation, Carrier argues that the disputed adjustments in "seniority dates which appeared on the Signalman Roster posted June 30, 1979, were made in accordance with...the provisions of Article IV, Paragraph B of the Training Program Agreement as agreed to by the Carrier and the Brotherhood of Railroad Signalmen." According to Carrier the negotiation of said Agreement was a proper exercise of the parties' collective bargaining responsibility and authority and that insofar as "...seniority rights exist solely under the terms of the governing Agreement...the Board may not modify or rewrite the terms of Agreements, as the Petitioners' request would necessitate in this matter" (Second Division Awards 6948 and 7077, Third Division Awards 16545 and 18576).

The Board has carefully read and studied the complete record in this lengthy and complex matter and is convinced that, for reasons articulated by Carrier in its Submission, this Claim is not properly before the Board.

Regarding the rationale of the above posited conclusion, suffice it to say that the record clearly shows that the Claim which Petitioners are attempting to assert before this Board has not been handled on the property up to and including the Chief Operating Officer of the Carrier designated to

handle disputes as required by Section 3, First (1) of the Railway Labor Act, Circular No. 1 of the National Railroad Adjustment Board, and the rules of the parties' applicable collective bargaining agreement. Normally such a determination, by itself, would be sufficient to dispose of the matter forthwith; however, because of the critical nature of Petitioners' paramount contention (invalidity of the Education and Training Program Agreement) the Board is further compelled to comment that despite Petitioners' obvious sincerity regarding their assertions, the record clearly shows that:

(1) the proper procedure was utilized by the parties in negotiating said Agreement; (2) the specific details of said Agreement were acceptable to the parties who were responsible for negotiating and administering such an agreement; and (3) said Agreement was approved by Carrier's authorized representative and by Organization's General Chairman for Seniority District No. 16. Given these three (3) conclusions the Board is satisfied that said Agreement is a valid agreement, and in view of the fact that the Board is without authority to change, amend or modify such agreements, and also in view of the fact that "seniority rights exist solely under the terms of the governing Agreement," Petitioners' claim is found to be without merit and will, therefore, be denied.

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:

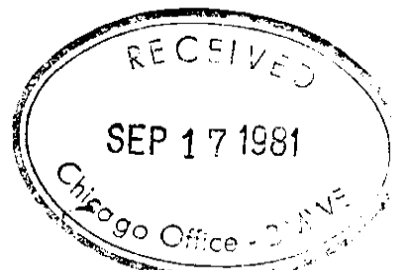
That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulsen*

Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1981.