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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26110
Docket Number CL-26323

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline, and Steamship Clerks
(Freight Handlers, Express and Station Employees
(Ann Arbor Railroad System - Michigan Interstate Railway
(Company (Operator)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9988) that:

1. Carrier violated the Rules Agreement dated January 1, 1957, as amended by the Interim Rules Agreement dated March 26, 1982, particularly Rule A-1 and others in effect between the Brotherhood of Railway, Airline and Steamship Clerks and itself, when the carrier failed to allow Clerk M. L. King the right to displace Clerks D. J. Lewis, M. D. Anderson and M. J. Innes at Owosso, Michigan, whom she attempted to displace by letter dated December 16, 1983. The carrier denied Clerk King her displacement rights by letter dated December 16, 1983.

2. Carrier shall now be required to allow Clerk M. L. King the right to exercise seniority and compensate her with all wage loss and benefits retroactive to December 16, 1983 and to continue for each and every subsequent date until the carrier ceases to violate the Rules Agreement. (MIRC-20)"

OPINION OF BOARD: Claimant was first employed by the Carrier on August 26, 1976. Claimant subsequently became the Office Manager of the administrative offices located in Owosso, Michigan and later was promoted to Executive Secretary. In 1978, Claimant was appointed to an official position of Assistant Secretary-Treasurer and thereafter to Vice President of Administration-Secretary-Treasurer. Claimant held the last-mentioned position until August 30, 1983.

On August 30, 1983, Claimant was suspended from service with pay. The suspension letter stated that:

"You may, from time to time, be called upon . . .
to assist with certain matters in the office.
Please assist . . . in any way possible."

By letter dated September 30, 1983, Claimant was notified that her employment was terminated.

By letter dated December 13, 1983, Claimant notified the Carrier's Senior Vice President of Operations, A. Hogg, of her desire to exercise her

seniority by displacing junior employee Diane Krajcovic. By letter dated December 14, 1983, Hogg notified Claimant that she could not exercise seniority and bump employee Krajcovic because the position held by Krajcovic was an excepted position and was not subject to bump or Displacement Rules. Hogg further stated in his letter that Claimant failed to exercise her seniority within 10 days as required by the Agreement and therefore, Claimant forfeited all seniority rights.

On December 16, 1983, Claimant notified Hogg that she desired to exercise her seniority by displacing junior employees D. J. Lewis, M. D. Anderson, or M. A. Clayton Innes. By separate letters of the same date to Hogg, Claimant stated that she reported to work that day and was refused employment because of the Carrier's position that Claimant had forfeited all seniority rights; requested seven days vacation and supplemental pension to be forwarded to her as soon as possible; and requested copies of all bulletins issued since August 20, 1983 regarding the Organization and a copy of the controlling Agreement. By letter of the same date, Hogg responded that Claimant's requests for copies of the Bulletins and Agreements would be handled as soon as possible and that her requests to exercise her seniority and bump the named employees were denied since Claimant failed to exercise her seniority within ten days and therefore she forfeited all seniority rights. On December 19, 1983, copies of the current Agreement and Bulletins were forwarded to Claimant.

On January 6, 1984, Claim was filed by the Organization on Claimant's behalf protesting the Carrier's refusal to permit the Claimant to exercise her seniority and bump employees Lewis, Anderson or Innes. The Claim specifically requested that Claimant be permitted to "exercise seniority and compensate her with all wage loss and benefits retroactive to December 16, 1983 and to continue for each and every subsequent date until the Carrier ceases to violate the Rules Agreement." The matter remained unadjusted by the parties.

By letter dated February 26, 1985, the Organization served notice of its intention to file an Ex Parte Submission in this case. The Claim stated, in pertinent part:

"(2) Carrier shall now be required to allow Clerk M. L. King the right to exercise seniority benefits retroactive to December 16, 1983 and to continue for each and every subsequent date until the carrier ceases to violate the Rules Agreement."

Missing from the Notice of Intent was the language found in the original Claim filed on the property "and compensate her with all wage loss and benefits" That language is, however, contained in the Statement of Claim found in the Organization's Submission in this case.

The Rules in the January 1, 1957 Agreement provide, in pertinent part:

"12(e) When reducing forces, seniority rights shall govern. When forces are increased, employees shall be returned to service in order of their seniority rights. Employees desiring to avail themselves of this rule must file their addresses with the proper officer at the time of reduction, and advise promptly of any change in address. Employees failing to file their address promptly with the proper officer at the time of reduction or failing to advise promptly of any change in address or to return to the service within seven (7) days after being notified (by mail or telegram sent to the last address given) or give satisfactory reason for not doing so will be considered out of service and their record closed. Employees must exercise their seniority rights under this rule in the offices of the Traffic Manager, Auditor and Local Freight Office at Toledo within two (2) days and on other seniority districts within four (4) days (Sundays and holidays not to be counted).

* * *

12(n) An employee returning after leave of absence may return to former position, or may upon return, or within three (3) days thereafter, exercise seniority rights to any position bulletined during such absence. Employees displaced by his return may exercise their seniority in the same manner.

* * *

12(s) Employees now filling or promoted to excepted or official positions shall retain all their rights and continue to accumulate seniority in the district from which promoted.

16(c) An employee who fails to report for duty at the expiration of leave of absence [shall be] considered out of service except that, when failure to report on time is the result of unavoidable delay, the leave of absence will be extended to include such delay."

The Rules in the March 26, 1982 Agreement provide, in pertinent part:

"A-7 An employe returning to duty after leave of absence, sickness, vacation, disability or suspension, shall either return to his former position, if available to him, or shall select any position bulletined during his absence which was awarded to a junior employee. If such employee elects to return to his former position, he may, within seven calendar days thereafter, select any position bulletined during his absence which was awarded to a junior employee.

* * *

C-1-(c) An employe whose position is abolished or who is displaced from his permanent position shall exercise seniority to positions not requiring a change in residence as defined in Rule A-1 (b) of this Agreement within 10 calendar days or forfeit all seniority, except as provided in Rule A-7, or in cases of personal illness, vacation or unavoidable causes, the 10 calendar day period will be extended proportionately to the extent of such absence. An employe entitled to exercise seniority in accordance with the foregoing but who is unable to do so due to the fact that no position is available, will be considered furloughed.

* * *

D-1-(c) No change on seniority rosters will be made by the Company without conference and agreement with the Division Chairman. Copies of all rosters will be furnished the General Chairman and the appropriate Division and Local chairman."

First, the parties are in agreement that while Claimant was in the excepted positions, she nevertheless retained her seniority. Rule 12(s) of the 1957 Agreement is consistent with that position.

Second, we find that based upon this record, Claimant was in a leave of absence status while she was in the management positions.

Third, putting aside the procedural issues raised by the Carrier, the main argument made by the Organization on the merits of the Claim is that Rule A-7 of the 1982 Agreement replaced Rule 16 of the 1957 Agreement and that a reading of Rule A-7 shows that "[t]he portion of the old rule dealing with the penalty if an employe did not report for duty on expiration of his leave, was abandoned by the parties when they negotiated the new rule." Thus, according to the Organization, Claimant could report at any time after a leave of

absence and exercise her seniority with respect to selecting bulletined positions awarded to junior employees. As the Carrier points out, the result of such an interpretation sought by the Organization is that an employee could wait for years after a leave of absence expired and then show up and claim a position.

We have closely considered the arguments of the parties and find that we are unable to sustain the interpretation sought by the Organization. First, the 1982 Agreement did not totally replace the 1957 Agreement. The 1982 Agreement provides that:

"Certain basic rules of the current Agreement between Ann Arbor Railroad System (Michigan Interstate Railway Co., Operator) and the Brotherhood of Railway, Airline and Steamship Clerks are changed and/or modified to the extent provided herein [emphasis added]."

We are not satisfied that under the facts of this case, Rule A-7 of the 1982 Agreement "replaced" Rule 16(c) of the 1957 Agreement so as to delete the traditionally accepted penalty as set forth in Rule 16(c) that an employee who fails to return to work at the expiration of a leave of absence is considered out of service. This Board has long held under language similar to Rule 16(c) that failure of an employee to return to service constitutes a forfeiture of seniority. See e.g., Third Division Awards Nos. 24836; 21539; 20678; Second Division Award No. 9496. Rather, we view Rule A-7 as one of the "modifications" of the 1957 Agreement contemplated by the 1982 Agreement. Indeed, any reading of Rule A-7 shows that it concerns itself with the situation where an employee returns to duty after a leave of absence and focuses on the exercising of that employee's seniority and not the situation where the employee fails to return after the leave of absence has expired. Rule A-7 comes into play after the return to work is accomplished. Rule A-7 specifically modifies Rule 12(n) of the 1957 Agreement by increasing the three day period for exercising seniority rights specified in Rule 12(n) from three to seven days and adding return from sickness, vacation, disability and suspension to the leave of absence language. In short, a reading of Rule A-7 shows that it supplements the provisions of the 1957 Agreement, but does not specifically delete Rule 16(c). If the parties intended such a drastic result as urged by the Organization, then we expect that the final language would have indicated such a change in a clearer fashion. To sustain this Claim, the burden is on the Organization to show such a result was intended. We are satisfied that the burden of demonstrating such an interpretation has not been met.

We also find that Rule D-1-(c) is not supportive of the Organization's position. That provision generally concerns itself with changes in seniority rosters. Under ordinary Rules of contract construction, the specific governs the general. The specific provisions concerning exercising seniority rights upon return from leave of absence must therefore prevail over the general language of Rule D-1-(c) which does not specifically address the issue of exercising seniority rights upon return from leave of absence.

Thus, Claimant was on a leave of absence until her management position was abolished on September 30, 1983. She was obligated to "return" at that point and exercise her seniority. She did not do so until approximately two and one-half months later on December 13, 1983. The Organization has pointed to no Rule that permits Claimant to wait such a lengthy period of time as Claimant did in this case to exercise that seniority. In this case we are merely the "contract reader." See American Postal Workers Union, AFL-CIO v. United States Postal Service, 789 F.2d 1, 6(D.C. Cir. April 18, 1986). Here the Agreement is clear to the extent that the interpretation urged by the Organization cannot be fairly read.

Likewise, we are not satisfied that the Organization has met its burden of showing that Claimant was somehow lulled into a false sense of assurance from officials of the Carrier that something might materialize for her in a management capacity thereby precluding or inducing Claimant from exercising her seniority rights. Although such a conclusion may have been argued from the initial suspension letter of August 30, 1983 that requested her assistance from time to time, the September 30, 1983 termination letter is quite clear on its face. We find nothing in the record to require a different result.

In light of our disposition of the Claim, we also find it unnecessary to address the procedural questions raised by the Carrier concerning the adequacy of the Claim and the contentions that certain arguments were not raised on the property.

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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.