

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Michael Ahern

PARTIES TO DISPUTE: (

(Metro-North Commuter Railroad Company

STATEMENT OF CLAIM: "Roster Dispute: The placement of 16 non-railroad personnel.

A. Gucciarcc, J. Mitkowski, M. C. Golden, S. Abranson, M. Nodell, G. F. Davis, I. Agnes, K. R. Gooden, E. E. Brown, C. Steinberg, G. M. Wondolowski, D. J. Chipman, M. T. Tocci, N. Rosen, M. E. Byam, and V. A. Watts now of Metro North Commuter were wrongly placed on Metro North Roster UA-09 dated 15 June 1984 ahead of M. S. Ahern, G. Higgins, S. Rocco, A. Nazzario, A. Soloman, W. Shepa, J. Hedman, P. Constantinople, G. Piplar, R. Tulli and L. Giles now of Metro North Commuter R.R.

We will show how the Implementing Agreement 27 July 82 between BRAC and Metro North was ignored along with other protective acts of legislation designed for our protection."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The claim before the Board challenges the propriety of the seniority date granted the Claimants by the Carrier after the Carrier hired them into clerical position in May, 1983.

All the Claimants were furloughed from Conrail when Conrail transferred its responsibility from commuter service on the Harlem, Hudson and New Haven Lines to the newly created Metro-North Commuter Railroad. Metro-North was created January 1, 1983. The transfer of employees from Conrail to Metro-North was executed pursuant to a July 27, 1982, Implementing Agreement between Metro North, Conrail and Brotherhood Railway, Airline and Steamship Clerks. There were a number of positions transferred and bulletined at Metro-North for which the Claimants were eligible, but lacked sufficient seniority.

Employment opportunities did arise in May of 1983 for which the Claimants were hired as new employees. However, this occurred after January 29, 1983, when BRAC and Metro-North agreed to transfer a number of clerical positions and their incumbents from the Metropolitan Transportation Authority (MTA) to Metro-North. As a result of the Agreement these employees were added to the BRAC roster and placed behind the clerical employees who originally transferred to Metro-North from Conrail. Notably the Claimants, after their hire, were placed on the seniority roster behind the former MTA employees.

On June 15, 1984, the Claimants filed a protest with the Carrier concerning their seniority standing relative to the former MTA employees. Evidently another letter was filed January 19, 1985, to which the Carrier responded on April 18, 1985. The Claimants then initiated their notice to the Board on January 13, 1986.

After reviewing the record it is the conclusion of the Board that the matter before it is procedurally defective. Even if it wasn't dismissed on this basis, the claim is without merit.

Procedurally the claim is defective because it was not handled in the manner prescribed by the Collective Bargaining Agreement. The Claimants did not file a proper grievance as required by Rule 49 of the Implementing Agreement nor was a conference requested or conducted on the property. Claimants clearly circumvented the express language of the Implementing Agreement, the Collective Bargaining Agreement and the Railway Labor Act, thus barring the grievance from further consideration.

Section 3, First (1) of the Railway Labor Act reads:

"(1) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Since failure to progress the matter to arbitration in the "usual manner", the Board has no authority. This is a well established principle.

As noted above even if the matter were properly before us it would be difficult to rule for the Claimants. First, it is noted that the Claimants had insufficient seniority for any of the positions initially created under the Implementing Agreement. There is no dispute about this. With respect to the former MTA employees, their placement on the roster was not only not made pursuant to the Implementing Agreement, but it had no effect on the Claimants. Thus, as was properly explained to them by the General Chairman, these were positions not available to them under the Implementing Agreement. Moreover, these were confidential/non-agreement positions such as Secretary to the President, etc.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.