

The Third Division consisted of the regular members and in addition Referee Charlotte H. Gold when award was rendered.

PARTIES TO DISPUTE: (Darwin L. Jefferson  
(  
(Soo Line Railroad Company (former Chicago, Milwaukee, St. Paul, and Pacific Railroad Company)

STATEMENT OF CLAIM:

"1) The Carrier violated the Clerk's Rules Agreement at Nahant, Iowa on November 2, 1984, when it arbitrarily terminated employee Darwin L. Jefferson from service of the Milwaukee Road.

2) The Carrier further violated the Agreement when it failed and/or refused to allow an unjust treatment hearing as provided by Rule 22(f) as requested by employee Darwin L. Jefferson on November 2, 1984.

3) The Soo Line shall be required to return Mr. Jefferson to service, re-establish his seniority, and compensate him for an additional eight (8) hours at the pro rata rate of Yard Clerk Position No. 25830, commencing on November 2, 1984 and continuing until the violation is corrected."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 were given due notice of hearing thereon.

On April 1, 1980, the Milwaukee Railroad became the interim operator of the Muscatine Line. On April 1, 1981, the Railroad also became the interim operator of the Iowa City Line, with trackage between West Davenport and Iowa City. Both lines were former Rock Island trackage. In accordance with the Labor Protective Agreement of March 4, 1980 (Miami Accords), the Milwaukee Railroad assigned positions on the two lines to former Rock Island employees holding seniority in Seniority Districts No. 36 and 37, when additional people were required.

Claimant, a member of District 36, was awarded Yard Clerk Position 25830, on April 19, 1982, at Nahant, Iowa. According to Carrier, he was hired to perform work in connection with the Iowa City Line.

On August 23, 1982, the Milwaukee Railroad became the permanent operator of the Muscatine Line and the West Davenport portion of the Iowa City Line. As a consequence, employees regularly assigned as of August 22, 1982, were dovetailed into the Milwaukee Railroad Clerical Seniority District No. 3. Carrier concluded that Claimant did not fall within the category of employees to be dovetailed. Claimant maintained that his position was related to the Muscatine Line and that his seniority should have been dovetailed.

The Milwaukee Railroad continued as the interim operator of the Iowa City Line until November 2, 1984, at which time it was determined that any Rock Island employee employed by the Milwaukee Railroad doing work in conjunction with the Iowa City Line would be terminated (without preservation of rights or benefits with the Railroad) simultaneously with the cessation of the interim service. Claimant was thus terminated.

At issue in this case is the question of whether Claimant was properly terminated, as well as the question raised by Carrier as to whether Claimant's appeal to this body was timely. While the Board agrees with Carrier that the time limits relied upon by Claimant in progressing the claim to arbitration are open to debate, we believe that it is in the interest of all concerned that the matter be resolved on its merits.

The crux of Claimant's case is that he was improperly handled in August 1982, with Carrier failing to dovetail him into Milwaukee Railroad Clerical Seniority District No. 3 when the Railroad became permanent operators of the Muscatine Line and the West Davenport portion of the Iowa City Line. Carrier, however, is convincing in its argument that Claimant's position was established for the performance of work in connection with the Iowa City Line rather than the Muscatine Line and that the position was established and terminated in accordance with the Miami Accords and associated implementing agreements.

Section 4(e) of Article III of the Miami Accords reads:

"If, for any reason, an interim service operator is denied Commission approval or court authorization for final sale or transfer of a line of a bankrupt carrier, or ceases to be an interim operator, or if a successor carrier agrees, or is ordered to, perform the functions formerly performed by the Rock Island or Milwaukee under an existing joint track-age agreement, the employment of bankrupt carrier employees who may be employed to fill the positions necessary for the operation of such service on such

line may be terminated simultaneously with the cessation of that service, without preservation of rights or benefits with that purchasing carrier."

In addition, Paragraph (d) of Article III of the parties' Implementing Agreement reads:

"Should Milwaukee not become a permanent operator, and should interim service be terminated, Rock Island employees employed by Milwaukee pursuant to this Agreement may be terminated without preservation of any rights or benefits with Milwaukee."

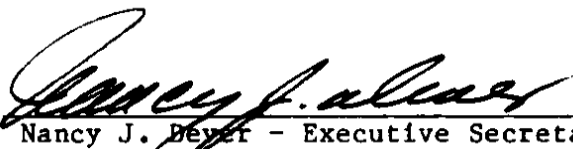
The Board has reviewed the status of those employees with whom Claimant alleged he was similarly situated. We find his position to be sufficiently different as to warrant different handling. We do not find that Claimant was subjected to disparate treatment.

For all these reasons we must conclude that Claimant was properly terminated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.