

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30884
Docket No. SG-30974
95-3-92-3-796

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (CONRAIL)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of B.S. Myers for compensation for all time lost because of furlough from Carrier's service beginning June 12, 1991, account Carrier violated the current Signalmen's Agreement, particularly Article VII of the National Agreement of June 4, 1991, when it failed to retain the Claimant in service."

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 employee 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.

In this claim, the Organization contends that Carrier violated Article VII of the 1991 National Agreement when it failed to retain the Claimant in service subject to his regular compensation beginning June 12, 1991. It submits that Claimant was furloughed on certain dates in 1991 and held out of service without compensation.

The Organization points out that national negotiations resulted in the Agreement of June 4, 1991, and its proposal to provide additional employment protection was included in this Agreement, in amended form as Article VII. It submits that the

clear intent of Article VII was to provide employment protection to all employees covered by the Agreement. Since this Carrier was signatory to the Agreement, the Article VII protection clearly encompasses the Claimant and other Carrier employees who had ten (10) or more years' employment relationship as of the date of the Agreement.

The Organization maintains that it is evident that the parties determined that the amended February 7, 1965 National Agreement would be the appropriate mechanism for extending employment protection to the employees who would qualify under the new Agreement. It argues that through this mechanism, Article VII would extend the new employment protection to Carrier's employees. The Organization submits that the amended February 7, 1965 Agreement was to provide employment protection for all affected employees with ten years' service.

In all, the Organization submits that Article VII is fully applicable to Carrier's employees and the Claimant, as a qualified employee, is entitled to the protective benefits of the amended February 7, 1965 Agreement. It asserts that Carrier should be required to compensate the Claimant for all time lost when Carrier failed to retain him in service as required by Article VII.

Accordingly, and for the foregoing reasons, the Organization asks that the claim be sustained.

Carrier argues that it did not violate the Agreement here. It submits that Conrail was never a signatory to, or covered by, the February 7, 1965 Agreement. Carrier maintains that the Agreement was applicable on certain, but not all, of Conrail's predecessors. It argues that when a collective bargaining agreement was negotiated with the Organization in 1981, the February 7, 1965 Agreement was specifically excluded from the list of National Agreements incorporated into the Signalmen's Schedule Agreement on its effective date of September 1, 1981.

Carrier submits that to assure that the statutory benefits would be uniform, Congress specifically provided that the Carrier would not inherit the contractual employee benefit liabilities of its predecessors.

Accordingly, and for the foregoing reasons, Carrier asks that the claim be denied.

We conclude that the Carrier is correct in its assertion that the February 7, 1965 National Agreement does not apply to Conrail employees. Although some of the predecessor properties of Conrail

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party to the 1965 Agreement, the statute which formed Conrail
ded its own protective benefits, replacing the benefits
ded under the February 7, 1965 Agreement and all other
iated agreements.

While the Organization asserts that Article VII of the June 4,
Agreement "revives" the February 7, 1965 Agreement, there is
idence to support this contention. We note that while Carrier
d have been more specific in its intention to exclude the
ary 7, 1965 Agreement, the Board must deny the claim based on
vidence of record.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified
:, hereby orders that an Award favorable to the Claimant(s) not
de.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

1 at Chicago, Illinois, this 10th day of May 1995.