NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4014

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In the Matter of the Arbitration between * Claim No 16-53 (85

---INTERNATIONAL ASSOCIATION OF MACHINISTS * Award No. 2

(Union) *

vs *

SEABOARD SYSTEM RAILROAD (L&N) *

(Employer *

CLAIMANTS: Nevels, Sneed, Hodson & Williams *

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BEFORE PUBLIC LAW BOARD

THOMAS F. CAREY - Neutral Member & Chairman
ROGER ELMORE - Employee Member
J. T. WILLIAMS - Carrier Member

Parties to the instant dispute were given due notice of the hearing, herein scheduled and held.

UNION'S STATEMENT OF CLAIM

That Machinist Frank Starke, Alfred Nevels, John Sneed, T. L. Hudson and W. J. Williams were furloughed at the Seaboard System Railroad's Savannah Shop and subsequently employed in January, 1983, at the Seaboard System Railroad's South Louisville Shops and improperly denied the right to count prior service rendered with Seaboard System Railroad at their former location as qualifying years of service with respect to vacation and personal leave days.

RELIEF REQUESTED:

That if this honorable Board finds the Employees position to be correct, each of the claimants be reimbursed for a loss of all vacation pay and personal leave days resulting from the improper denial of their previous years of service worked at their former location.

POSITION OF THE CARRIER:

It is the Carrier's position that the claim is not supported by an agreement and should be denied by this Board.

The Carrier's position will be presented in the following component parts:

I. There is no agreement under which the Claimants had a right to transfer from the SCL Railroad at Savannah to the L&N Railroad at Louisville.

II. There is no agreement under which the Claimants had a right to have their years of service under the SCL Schedule Agreement counted as qualifying years of service for vacation and personal leave days under the L&N Schedule Agreement.

III. The Claimants have not been affected by the corporate merger of the SCL and L&N or by any transaction to which New York Dock Conditions are applicable.

IV. The IAM has not met its burden to prove what they claim is supported.by existing agreement rules, and this Board has no authority to grant the request for "equitable relief" by imposing new rules.

FINDINGS

The former Louisville & Nashville Railroad (L&N) and the former Seaboard Coast Line Railroad formerly merged to become the Seaboard System Railroad. The five (5) machinists had been furloughed at the Savannah, Georgia shop of the Seaboard Coast Line (SCL) and were subsequently employed at the Louisville, Kentucky shops of the former L&N Railroad.

The Claimants on July 19, 1984 submitted a claim which asserted in pertinent part:

". ..we the undersigned contend that the current agreement which it states: An employee with 8 qualifying years of service receives three weeks of vacation and also receives one personal leave day. A employee with seventeen years receives four weeks vacation and qualifies for two personal days.

"We fully understand that prior to the merger which have taken place, each of the railroads which currently makes up Seaboard Systems Railroad operates on independent agreements. But at the same time realize they negotiated a National Agreement as a single unit with regards to vacations, personal days. The qualifications for each of those plus other benefits agreed to between representative for the Rail Carriers and I.A.M. representative for the Organization.

". ..it is our contention that to deny us of those years as credit towards qualifying for our vacation and personal days is unfair, unjust and not in line with our controlling agreement."

The Shop Superintendent denied the Claim on August 20, 1984 as follows:

"In reference to your letter-dated July 19, 1984, which all of you signed, pertaining to your vacation rights and benefits, due to the fact that you work for Seaboard System Railroad Company, even though you were relocating from the Old SCL RR Co., to the Old L&N side of the Seaboard Railroad Company. You were hired a's new employees.

"There was no work transfer or agreement made between your respective locations or unions.

"We here at South Louisville Shops needed craft personnel to fill positions after all of our furloughed personnel in these crafts were called back to work, in your case, machinists. We were made aware of the fact that some furloughed machinists on the Old SCL side of the Seaboard Railroad Company might be interested in filling these positions. Rather than hire personnel from other Railroads or outside the rail industry, we contacted these points where machinists were furloughed and hired a number of you to fill these open positions.

". ..Your reference to the National Mediation agreements is not applicable in this case. No National agreement has been negotiated, which would let you retain the benefits acquired on the Old SCL Railroad and carry forward as a new employee on the Old L&N Railroad."

There is no dispute in the record as to when the five (5) Claimants were employed by SCL or what their Machinists Seniority is in Savannah. Nor is there any dispute as to when they were furloughed by SCL and subsequently employed by L&N.

What is in dispute is the application of the two separate agreements that the Organization has with SCL and L&N and what is the impact, if any, of the merger of the two Railroads on these Agreements.

Both Parties highlight the language of each Agreement in reference to transfers, reduction in force and furloughed employe The Organization argues that even if "separate agreements" were to have bearing, the language of each is virtually identical in respect to these aspects of the Agreements. The Carrier stresses that the Agreements are separate and distinct.

The Board can find no contractual support that either Agreem grants employees transfer rights from SCL to the L&N properties or vice versa. This is not to say, given the "merged!' Seaboard Syste Railroad, that such a transfer benefit could be mutually beneficia Rather, it acknowledges that it is for the Parties and not this Board to negotiate such a contractual consolidation. This Board can only adjudicate the Agreement as it finds it.

The Organization in submitting the original claim on January 16, 1985, acknowledges the distinction in the Agreements when it noted:

> "Carrier is a single system Railroad, however, it has separate working "agreements for each of the former Railroads. Both agreements have very similar, non-conflicting agreements rules which enable furloughed employees to transfer to other points of employment, yet retain their service rights for qualifying for vacations and personal leave days. Additionally, when the former Louisville National Railroad and the Seaboard Coast Line Railroad merged on January 1, 1983, the Interstate Commerce Commission set forth protective conditions contained in Finance Docket 28905 (New York Dock). This protection applies to employees placed in an adverse position as a result of the merger, and would apply in this instance.

The' fact of the existence of two separate Agreements cannot be overlooked or ignored by this Board. It is the language that

the Parties have selected to express their intent regarding such benefits as transfers that control. Both Agreements still exist as of this writing as distinct documents and specify the employment relationship between the Organization and either the SCL or the L&N Railroad but not the merged system.

The Organization claims that the protective conditions contained in Finance Docket 28905 (New York Dock) should apply. It asserts the failure of the Carrier to count service with the SCL as service for the L&N for vacation purposes constitutes an adverse effect on the Claimants. That Claim is not supported in the record before this Board. There is no indication that such service was ever combined before the merger or that the two facilities in question were to be considered as consolidated facilities.

Absent some showing of an "Implementing Agreement" in which the Parties specifically addressed and resolved the question of prior credit for purposes of vacation eligibility, this Board cannot grant equitable relief by writing'such a Rule. Further, there is no dispositive evidence in the record to support the Organization': contention that the five (5) Machinists were furloughed by the SCL and that their work was transferred to another SCL location. Finally, there is no showing that the Claimants were recalled to service from furlough or that they were directed to report to work at the new.location. No persuasive rebuttal exists in the record to the Company's claim that they were advised of the opening to determine if they were interested and all responded in the affirmative.

A W A R D

This Public Law Board, upon the whole record and all the evidence, finds and holds:

The Claims of Machinists Starke, Nevels, Sneed, Hudson and Williams that they were denied vacation and personal leave days as a result of being furloughed at the Savannah Shop (SCL) and subsequently being employed as "new" employees at the South Louisville Shops(L&N) as new employees in January 1984 is NOT SUSTAINED for the reasons set forth in the body of this AWARD.

Jericho;' New York
June 29, 1986

Thomas F. Carey, Chairman
Neutral Member

Roger Elmore
Employee Member

J. T. Williams
Carrier Member