

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

EDGAR P. VACCA

THE PENNSYLVANIA RAILROAD COMPANY

EMPLOYEES' STATEMENT OF CLAIM: The above named company and union, through their officers and agents, have discriminated against the petitioner, Edgar P. Vacca, in that by concerted action of the company and the union the petitioner was wrongfully discharged from the employ of said company. As a result of said discharge the petitioner has been denied his seniority rights and has lost wages since the date of such discharge. Petitioner asks that the National Railroad Adjustment Board order the reinstatement of petitioner as an employe of The Pennsylvania Railroad Company with full seniority rights and petitioner also requests that the company and the union be ordered to pay to the petitioner a sum of money equal to the amount of wages he has lost as a result of his discharge from the employ of the company.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 30, 1952, the petitioner was employed by the company in Columbus, Ohio, as a car man with a seniority number of 122. The petitioner had been employed by the company for approximately fourteen years.

On May 8, 1952, the company and the union entered into a union shop agreement, the terms of which provided that union membership was a condition of continuing employment for employes who were members of a craft represented by the union. The petitioner was a member of a craft so represented.

On October 22, 1952, the union notified the company that the petitioner had failed to comply with the membership requirements of the agreement entered into on May 8, 1952, between the company and the union (a copy of said notice is submitted herewith and identified as Exhibit A). On November 13, 1952, the petitioner was notified by the company of the union's position. A copy of the letter notifying the petitioner of said fact is submitted herewith and identified as Exhibit B. On November 18, 1952, the petitioner requested a hearing on the question of his compliance with the membership requirements of said agreement. A copy of said request is submitted herewith and identified as Exhibit C. On November 19, 1952, the petitioner was notified by the company that a hearing would be held at 10:00 A. M., Monday, November 24, 1952. A copy of said notification is submitted herewith and identified as

shall be final unless appeal therefrom is taken, in the manner stated heretofore, to a neutral arbitrator. No such appeal was taken in the instant case, and, therefore, the claimant's seniority was terminated in conformance with the said agreement.

It is obvious, therefore, that all of the steps taken in this case resulted from the operation of the union shop agreement. Under such circumstances, the present claim is specifically barred by Paragraph 17 (a) of the union shop agreement.

In the statement of "Question Involved" to your Honorable Board, the claimant has apparently taken the position that discrimination existed in this case and that carrier was a party to it. Claimant has not produced any evidence, either at the hearing before the superintendent, or at any other time, which supports this contention. Without substantial proof of this allegation, the contention has no merit whatsoever.

Under the provisions of this agreement, claimant was permitted sixty days in which to join the union. He refused to comply within the time allowed. In fact, he was given a grace period of over ninety days after the original expiration date (July 15, 1952) before he was cited by the union. This certainly has no earmarks of discrimination.

Be that as it may, it is respectfully submitted that assuming any discriminatory practices are involved in this claim, the carrier had no knowledge thereof, since under the union shop agreement, policing of the agreement is entirely the responsibility of the United Railroad Workers of America, C. I. O., and the carrier has no knowledge with regard to the membership or non-membership of its employes in the union unless the union raises the question under the agreement, nor does the carrier have any knowledge as to the circumstances under which the union either accepts or rejects application for membership. No inquiry into membership in the union is made by the carrier, except in instances where an employe has been cited for non-compliance with the agreement, and then only where the employe disputes the union's notice of non-compliance by requesting a hearing.

The claimant was granted a hearing in the instant dispute on November 24, 1952, and at that time he made no reference to any discriminatory practice arising under the application of the union shop agreement. Claimant then waived his right to a hearing before a neutral arbitrator, where, if this purported discrimination existed, the matter could have been finally decided. His failure to determine this issue in the matter provided for under the agreement estops him from now raising the question and bars the claim.

CONCLUSION

The carrier respectfully submits that since there is in existence a method whereby disputes and grievances arising under the union shop agreement applicable to claimant can properly be disposed of, which method is incorporated into the provisions of the agreement itself, and since this dispute arises under that agreement, your Honorable Board has no jurisdiction with regard to this dispute and the claim should be dismissed.

Without waiving this objection to the jurisdiction of the Board, the carrier has shown that no provision of any agreement between the carrier and its employes of the class or craft of which claimant is a member supports the claim, and that in fact, a specific provision of the union shop agreement bars all grievances, time claims and money claims in connection with the operation of that agreement. Likewise, claimant failed to appeal this dispute in the manner provided by the union shop agreement. Consequently, the carrier submits that even if your Honorable Board should take jurisdiction in this dispute the claim should be denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

This dispute arises because petitioner's seniority was terminated by virtue of his alleged failure to comply with the terms of the May 8, 1952 Union Shop Agreement negotiated by the above-named carrier and The United Railroad Workers of America, C. I. O. Since said organization is the statutory representative of employes in the bargaining unit to which petitioner belonged during his service with the carrier, the cited agreement is controlling in this proceeding. The provisions of this agreement, where questioned, must be upheld by this Division unless it can be shown they are contrary to law or are otherwise invalid. Petitioner makes no such showing.

The agreement sets forth remedial machinery available to employes who have been notified their seniority will be terminated because of alleged failure to comply with the specified union membership requirements. Said machinery includes a hearing on the property, followed by a decision of carrier's Superintendent. An appeal from the latter's decision may be had by filing timely notice, in which event the dispute "shall be submitted to a neutral arbitrator, to be selected by the National Mediation Board, whose decision . . . shall be final and binding." (Paragraph 13 (f).)

Petitioner was granted such a hearing but he failed to file notice of appeal from the Superintendent's adverse decision. Claimant does not even ask the parties to the contract for exemption from the timely notice requirement so that he may now submit the dispute to a neutral arbitrator per Paragraph 13 (f). Instead, by seeking relief before this Division he is attempting to circumvent the valid adjudication machinery established by the parties.

It should be self-evident that we are without authority to rule on the merits of this controversy. Assertion of jurisdiction under the circumstances here present would amount to abrogating a binding provision of the agreement. This we have no power to do.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1955.