

Award No. 5250
Docket No. 5133-I
2-CUT-I-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

ROBERT GUNN, CARMAN PAINTER, PETITIONER
CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreements the Carrier improperly assigned Carman Painter's duties to foremen, carmen, and B & B employees.
2. That the Carrier be ordered to compensate Carman Painter Robert Gunn eight hours pro-rata rate from October 5, 1964 to October 30, 1964 inclusive.
3. That the Carrier be ordered to compensate Carman Painter Norman Eickstien eight hours pro-rata rate from November 2, 1964, to February 26, 1965 inclusive.
4. That the Carrier be ordered to compensate Carman Painter Robert Gunn eight hours pro-rata rate from March 1, 1965 until such time as claim is properly adjusted.
5. That the Carrier be ordered to re-instate Carman Painter Robert Gunn.
6. That Mr. Gunn and Mr. Eickstien be compensated for vacation pay and health and welfare premiums.

EMPLOYEES' STATEMENT OF FACTS: The Cincinnati Union Terminal Company, hereinafter referred to as the Carrier, posted a bulletin to abolish the Carman Painter's position held by Robert Gunn, hereinafter referred to as the claimant. The Carrier violated Rule 85, the agreement of May 14, 1946, Rule 73, and the precedented history of the Cincinnati Union Terminal Company. This dispute has been handled with the Carrier up to and including the highest Officer so designated by the Carrier, with the result that he has declined to adjust it.

POSITION OF EMPLOYEES: On September 30, 1964, the Local Chairman wrote a letter to Master Mechanic E. A. Dryer advising him that the Carman

work to other carman under the subject circumstances was not an agreement violation. A denial award is indicated.

AWARD

Claim denied."

This Carrier and the duly authorized representative of the craft and class of Carmen on this property were in agreement that the contract was not violated. If we did not agree, the Brotherhood would have submitted the claim to the Adjustment Board, and the fact that they did not, we believe is of great significance. We have here a situation where two parties to a contract are in agreement as to its meaning and in addition have an interpretation from the Second Division in Award No. 3512 which supports the understanding and agreement of the parties.

CONCLUSION

In the foregoing Submission we have shown that this claim is barred due to the failure of the Claimant to comply with the mandatory time limit requirements of Article V of the Agreement of August 21, 1954. The record shows that the Claimant was well aware that under the time limit rule he was required to institute proceedings before the Second Division National Railroad Adjustment Board on or before December 22, 1965, and that he failed to do so.

Without prejudice to our position the claim is barred, the record shows that the work of the position of Painter no longer exists on the property of the Cincinnati Union Terminal Company and that no work exclusively within the jurisdiction of Painters was given to anyone else subsequent to the abolishment of the position of Painter.

In such circumstances, the position was properly abolished, this Carrier did not violate the Agreement as alleged by the Claimant and we respectfully urge this Board to follow its precedent Award No. 3512 and deny this claim in its entirety.

All data submitted in support of Carrier's position has been made known to the Employees and made a part of this particular question in dispute.

Oral hearing is not requested.

(Exhibits not reproduced.)

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.

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

Carrier's highest designated officer of appeals denied the claim in a letter dated March 23, 1965. The claim was submitted to the Second Division in

a letter dated March 22, 1966; twelve months later. It is barred under Section 1(c) of Article V of the August 21, 1954 Agreement which provides that claims must be instituted before the appropriate division of the National Railroad Adjustment Board within nine (9) months from the date of the decision of the Carrier's highest designated officer. The claim should have been presented to this Division of the Board by December 22, 1965.

It is unfortunate that Claimant is not experienced in the procedures prescribed by the Railway Labor Act and is not fully aware of the time limits contained in Article V of the August 21, 1954 Agreement. Such inexperience and unawareness is no valid reason to ignore the explicit provisions of the Act and the Agreement. Carrier was under no obligation to extend the time as requested by the Claimant. Even then he had six days to institute the claim with the Board which he did not do until three (3) months later.

On the basis of the record, we have no alternative but to dismiss the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1967.