

Award No. 6052
Docket No. 5914-I
2-T&P-I-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr when award was rendered.

PARTIES TO DISPUTE:

HAROLD A. SABIN, Petitioner

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

"Mr. Sabin's Complaint grows out of the coordination of the Midland Valley Railroad and Texas Pacific Railroad coordination [sic]. The basis for the complaint is that Mr. Sabin elected to remain in Muskogee as a furloughed employee, and the agreement executed between the Midland Valley Railroad Company and the various union craftsmen employed at Muskogee dated September 1, 1944, requires that all sheet metal work and pipe work at the Muskogee shop be done by an employee of Mr. Sabin's craft. There has been a continuous violation of this agreement since January 1, 1965. Mr. Sabin has been damaged not only by the loss of wages, but other benefits which would have accrued to him during the ensuing time had he been continuing in service as a part time employee."

PETITIONER'S STATEMENT OF FACTS: Comes now the petitioner, Harold A. Sabin, and for the cause of action against the above named respondents, the Missouri Pacific Railroad Company and the Sheet Metal Workers International Association, and alleges and states that he had been an employe of the Midland Valley Railroad Company for some thirty-seven (37) years and that prior to the 2d day of January, 1965 the Midland Valley Railroad Company was purchased by the Missouri Pacific Railroad Company and said merger or purchase was approved by the Interstate Commerce Commission; that as a part and parcel of said agreement approved by the Interstate Commerce Commission were certain conditions for the protection of employes employed by the said Midland Valley Railroad Company.

That on the 2d day of January, 1965, the petitioner, Harold A. Sabin accepted a furloughed status; that at the time of accepting said furloughed status the petitioner had the choice of accepting a furloughed status and receiving the sum of Two Thousand Dollars or, in the alternative, petitioner could have accepted a severance and Six Thousand Dollars. Petitioner, in relying upon the promise that the respondent railroad carrier would call upon

ment of claimant's position. At the time his position was abolished, all of the machinist positions were abolished as well as the remaining sheet metal worker positions. Later, the remaining electrician position was abolished. In all of the years during this transition, there has been no claim from any of the crafts at Muskogee because mechanics employed at Muskogee performed work of crafts which did not have mechanics employed at Muskogee. The lack of complaints or grievances is proof that the parties to the agreement have applied Article VII of the agreement of August 21, 1954, to Muskogee. In this case the Sheet Metal Workers International Association, which is a party to the agreement, has not handled the claim on behalf of claimant recognizing that Article VII applies at Muskogee.

The principles of Article VII of the agreement of August 21, 1954, have continued to date, being modified by Article IV of the agreement of September 25, 1964, to the extent that a criteria was established for determining whether or not there is sufficient work of any craft to justify the employment of a mechanic of that craft. Neither the shop craft organizations nor claimant has requested a joint check of the amount of sheet metal workers' work performed at Muskogee.

For the reasons stated above, mechanics of other crafts may be required to perform sheet metal work and pipe work and such work is not restricted exclusively to an employe of Mr. Sabin's craft.

The letter of December 20, 1967, alleges "a continuous violation of this agreement since January 1, 1965," and states that Mr. Sabin has been damaged by the loss of wages and other benefits. As we pointed out, claimant was employed as a carman from May, 1965, until October, 1965, when he laid off due to disability. Claimant undoubtedly had other earnings during the period January 1, 1965, until employed as a carman in May, 1965. Although this claim should be denied for the reasons stated above, the claim for loss of wages must be limited to the actual loss taking into account outside earnings and his earnings as a carman. The claim for wage loss must necessarily terminate when claimant laid off account disability in October, 1965.

For the reasons fully explained in this submission, the claim is barred under the time limit rule and should be denied for that reason. In any event there is no basis for a claim or grievance under the schedule agreement and the claim, if the application of the schedule agreement is considered, is not supported by the rules and 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.

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

This dispute arose following the merger of the Midland Valley Railroad into The Texas and Pacific Railway Company. Claimant was employed as a sheet metal worker on the Midland Valley Railroad. The agreements between

the Midland Valley Railroad and System Federation 22, Railway Employees' Department, AFL-CIO, continue to apply to the Shop Craft employees at Muskogee, Oklahoma.

The Claimant elected to remain in Muskogee on a furloughed status rather than follow his work as provided in the Memorandum of Agreement between the two merged Carriers and the Shop Craft employees represented by System Federation Nos. 22 and 121.

Claimant has never presented a claim arising out of his furlough in December, 1964, to any officer of the Carrier. One December 20, 1967, Claimant's personal attorney advised Carrier by letter that on the 31st day of October, 1967, he filed a Complaint before the Railroad Adjustment Board on behalf of the Claimant.

The Carrier contends that the claim is barred by the time limit provisions of Article V of the National Agreement of August 21, 1954.

Second Division NRAB Award 5246 states:

"The Railway Labor Act contemplates that before a grievance can be brought to this Board it 'shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such dispute.' This was not done with respect to the claim that is pending before this Board."

Claimant failed to utilize the grievance procedure available to him. We further find that the claim was not filed within the required period as set out in Article V of the August 21, 1954 National Agreement. (See Second Division NRAB Award 2435.)

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1970.

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