



Award No. 6086

Docket No. 5897

2-CUT-FO-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. — C. I. O. (Firemen and Oilers)

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the current agreement the Carrier improperly denied Firemen and Oiler employe Louis Henry payment for vacation earned in 1968.

2 — That accordingly the Carrier be ordered to compensate Louis Henry five (5) days pay in lieu of vacation earned in 1968 for 1969.

EMPLOYEES' STATEMENT OF FACTS: On February 20, 1968, the Cincinnati Union Terminal Company, hereinafter referred to as the carrier, employed Mr. Louis Henry, hereinafter referred to as the claimant, as a stationary fireman in the power plant. Mr. Henry worked as such from date of hiring until September 15, 1968, at which time the power plant was closed and all positions abolished. He worked a total of 120 days and thus qualified for five days' vacation pay under the agreement.

Bulletins No. 13, 13-A and 13-B, advise that the power plant would be closed on July 31, 1968, then postponing the date of closing and subsequently notifying that the power plant would be closed on September 15, 1968.

On June 5 and July 15, 1968, in conference with the carrier, the employes requested an implementing agreement to spell out the protection and rights due the employes in accordance with the agreements. The carrier refused to write an implementing agreement but indicated that all vacation allowances due to the affected employes would be paid. Letter from carrier dated July 26, 1968, advises that the vacation allowance would be paid.

The employes accepted this in good faith and it was not until the claimant had attempted to collect his vacation pay on several occasions that it became apparent to the employes that the carrier was denying the claimant pay for vacation rightfully earned.

carrier in writing within 60 days from the date of the occurrence on which the claim is based as required by the mandatory time limits of Article V of Section 1(a) of the August 21, 1954 agreement. The Adjustment Board awards quoted by carrier heretofore in this Submission are precedents which uniformly held that the procedural provisions of Article V of the August 21, 1954 agreement are applicable to claims for vacation pay such as the present claim.

For the foregoing reasons, this carrier respectfully requests this Board dismiss or deny this claim in its entirety.

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.

Claimant was employed in Managements' Power Plant on February 20, 1968 and reported for work on February 21, 1968. The Power Plant was scheduled to be replaced with package boilers within a six month period. It was actually closed September 15, 1968 and claimant was laid off.

Under date of December 18, 1968 the General Chairman wrote a letter to the Manager of the Company, in which he referred to meetings had between the parties. Discussions were had about Mediation Agreement No. A-7030 relative to all employes, including the Claimant's status as a result of the Power Plant closing down. In that letter, it was the contention of the Organization that the Claimant qualified under Section 7 and 8 of the September 25, 1964 Agreement. They additionally aver that Section 8 "specifically states that any employe affected by a change in operations for any of the reasons set forth in section #2 shall 'not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief etc., under the same conditions and so long as such benefits continue to be accorded to other employes of the Carrier in active service or on furlough as the case may be to the extent that such benefits can be so maintained under present authority or law or corporate action or through future authorization which may be obtained."

The Organization further states that after two meetings, the Management refuses to comply with the September 25, 1964 Agreement and will not settle his claim "on the pretext that he is not entitled to one week of vacation which he earned by working 120 days in 1968, as outlined in the National Agreement." We are reminded that the above information is contained in the December 18th letter together with a claim for 40 days at the rate of the position last occupied, plus five days at the rate of the position last occupied as vacation pay.

It is quite readily apparent from the contents of the December 18th letter that the instant dispute was handled on the property by the Organiza-

tion itself as a dispute coming under the provisions of Sections 7 and 8 of Article I of the September 25, 1964 Agreement.

In a letter from the Organization to Management under date of July 18, 1969, the following claim was submitted to Special Board of Adjustment No. 570:

"That the Cincinnati Union Terminal, hereinafter referred to as Carrier, violated the Agreement dated September 25, 1964, when it refused to allow Firemen and Oiler employe, Louis Henry, the protective benefits of this Agreement."

This claim was denied by the Special Board of Adjustment No. 570 on the grounds that Claimant was a "temporary employe as contemplated in Article I, Section 3, of the Agreement. Claimant is not entitled to protective benefits provided for in the September 25, 1964 Agreement."

We agree with the findings of Special Board of Adjustment No. 570. Further, we direct attention to Section 12 of Article I of the September 25, 1964 Agreement:

"Section 12 —

Any dispute with respect to the interpretation or application of the foregoing provisions of sections 1 through 11 of this Article (except as defined in section 10) with respect to job protection, including disputes as to whether a change in Carrier's operations is cause by one of the reasons set forth in section 2 hereof, or is due to causes set forth in section 3 hereof, and disputes as to the protective benefits to which an employe or employes may be entitled, shall be handled as hereinafter provided."

Thus, Article IV — Resolution of Disputes provides in pertinent part:

Section 1 — Establishment of Shop Craft Special Board of Adjustment

"In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as "Board," is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection, and Article II, Subcontracting, of this agreement. The parties agree that such disputes are not subject to Section 3, Second, of the Railway Labor Act, as amended.

Section 8 — Jurisdiction of Board

The Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of Article I, Employee Protection, and Article II, Subcontracting."

"Section 9 — Submission of Dispute

Any dispute arising under Article I, Employee Protection, and Article II, Subcontracting, of this agreement, not settled in direct

negotiations, may be submitted to the Board by either party, by notice to the other party and to the Board."

Clearly even from a perfunctory reading of the above pertinent provisions of the September 25, 1964 Agreement, the parties have effectively removed any disputes arising under that Agreement from the jurisdiction of this Board. Once the parties have mutually agreed to the establishment of certain procedures and machinery to resolve disputes and specifically remove this Board from assuming jurisdiction, we have no alternative other than to dismiss the instant claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December, 1970.