

Award No. 6102
Docket No. 6021-I
2-IC-I-'71

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:

W. E. BOGARD, PETITIONER

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(A) Requested separation pay from F. K. Stanford, Superintendent of the Illinois Central Railroad on August 16, 1969. Request was refused in letter dated September 17, 1969.

(B) Sent copies of both letters to Mr. H. J. Zack, along with my reasons for believing the Washington Job Protective Agreement had been violated.

(C) Mr. H. J. Zack had two conferences with Mr. J .P. Lange, Manager of Labor Relations. Separation pay was denied at both of these by Mr. Lange.

(D) Received a letter from Mr. H. J. Zack on the denials stating that he was taking their word on this. He refused to take the case any further and said he was closing his file on it.

(E) Wrote a letter to Congressman Shipley asking his advise on this matter. He suggested and so did the Director of the National Mediation Board, that I contact the National Railroad Adjustment Board.

PETITIONERS STATEMENT OF FACTS:

Palestine, Illinois August 11, 1969
Station Date

2:00 P. M.

NOTICE TO ALL MEMBERS OF Carmen ORGANIZATION OF
Palestine SHOP.

The regular Car Inspection job Thursday thru Monday with Tuesday and Wednesday as rest days held by W. Richards and the

Relief Car Inspector job Saturday thru Wednesday with Thursday and Friday as rest days held by E. Bogard will be abolished after the completed tour of duty Monday August 18, 1969.

A vacancy exist for position described below;

One Car Oiler and other assigned duties - Thursday thru Monday with Tuesday and Wednesday as rest days.

HOURS 6:30 A.M. to 2:30 P.M. RATE \$2.990 DAYS PER WEEK 5 Days.

Written applications for the above position will be received in my office until 12:00 Noon Aug. 18, 1969, at which time the senior qualified applicant will be assigned.

cc: Local Chairman
Master Mechanic
Bulletin Board
File Record

/s/ B. E. Vermillion
Foreman

Palestine, Illinois
August 16, 1969

Mr. F. K. Stanford
Supt. Ill. Div.
Champaign, Illinois

Subject: NOTICE TO ALL MEMBERS OF Carmen ORGANIZATION OF Palestine SHOP.

The regular Car Inspector job Thursday thru Monday with Tuesday and Wednesday as rest days held by W. Richards and the Relief Car Inspector job Saturday thru Wednesday with Thursday and Friday as rest days held by E. Bogard will be abolished after the completed tour of duty Monday, August 18, 1969.

Please accept this as my application for separation allowance, lump sum.

Please refer to Article 14 Appendix C Section 6 & 7 under Employee Protection.

My Complete name and address appear below:

William Earl Bogard
511 E. Harrison
Palestine, Illinois 62451

Respectively Submitted

W. E. Bogard
William Earl Bogard

forth in Article I, Sections 1 and 2 thereof. Displacement per se does not afford this protection. Such an employee is duty bound to seek and obtain employment with the Carrier in accordance with the rules or agreements. This the claimant did not do * * * Under these circumstances, he may not be regarded as deprived of employment.

In Award 180, the referee held:

Moreover, Carrier tendered claimant * * * the opportunity to transfer to Pine Bluff and to continue working. Claimant chose to reject the offer. His action in refusing to accept employment at Pine Bluff, in the instant circumstances, is an adequate basis, under Article I, Section 3, to disqualify him from the protection afforded by the September 25, 1964 Agreement.

The claimant admits that he received an offer of another job, but seems to contend that there is some sort of time limit on offers of employment. The Awards quoted above clearly provide that the employee is required to exercise his seniority to obtain another position, whether the company offers any positions at all. In this case, not only did the claimant fail to utilize his seniority, he refused to acknowledge a concrete offer of employment made by Master Mechanic Harrell.

Clearly, this claim is directly parallel to the cases decided in the preceding awards, and should be denied.

CONCLUSION

The company has shown that this claim is not within the jurisdiction of the Second Division inasmuch as the September 25, 1964 Agreement grants exclusive jurisdiction to such claims to Special Board of Adjustment No. 570. The claim should be dismissed in accordance with Second Division Awards 5633, 5667, 5668, 5750 and 5939.

Without prejudice to this position, the company has also shown that the claimant was given proper notice under Rule 28 of the schedule agreement, and that this notice was proper because the furlough was part of a standard force reduction. The company has also shown that there were numerous positions available throughout the system, including over 100 set-up employees, and three permanent positions at Champaign, Illinois. Had the claimant complied with the requirements of Article I, and exercised his seniority, he would not have lost any compensation, and would have had continuous employment.

By failing to obtain one of the positions available to him through the exercise of his seniority rights, the claimant has forfeited the protective benefits of the September 25, 1964 Agreement.

The company asks the Board to dismiss or deny the claim.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Petitioner is asking for a lump sum separation allowance under Article I of the September 25, 1964 Mediation Agreement because his position was abolished. Article VI, Sections 1 and 8 of that Agreement establish a Special Board with exclusive jurisdiction over disputes arising out of that Agreement. They read:

"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."

Since Petitioner's claim is based upon an alleged violation of the September 25, 1964 Agreement, an interpretation is required of the provisions of that Agreement. He is, therefore, in the wrong forum. Only the Shop Craft Special Board of Adjustment, as provided in Sections 1 and 8 of Article VI, has jurisdiction to adjudicate the claim. There is no alternative but to dismiss the claim.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 21st day of April 1971.