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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6501
Docket No. 6327
2-EL-EW-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 100, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Erie Lackawanna Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, Assistant Communications Constructionman George A. Rakus was improperly furloughed from service of the Carrier.
2. That under the current agreement, the aforesaid employe was improperly transferred to another job within his class or craft beyond the same general locality as his point of employment on the date affected.

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.

Petitioner alleges that Claimant, an Assistant Communications Constructionman, was improperly furloughed on November 27, 1970, when his job was abolished. Specifically, violations are alleged of both the September 25, 1964 Mediation Agreement and the August 19, 1968 merger protective agreement.

Article VI, Sections 1 and 8 of the September 25, 1964 Mediation Agreement provides:

ARTICLE VI - RESOLUTION OF DISPUTES

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 1(d) of the August 19, 1968 Protective Agreement gives exclusive jurisdiction to an Arbitration Committee over disputes involving the interpretation of that Agreement. Section 1(d) reads:

In the event any dispute or controversy arises between Norfolk & Western and any labor organization signatory to this Agreement with respect to the interpretation or application of any provision of this Agreement or of the Washington Job Protection Agreement (except as defined in Section 11 thereof) or of any implementing agreement entered into between Norfolk & Western and individual organizations which are parties hereto pertaining to the said merger or related transactions, which cannot be settled by Norfolk & Western and the labor organization or organizations involved within thirty days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee each party shall, within ten days, select one member of the arbitration committee and two members thus chosen shall endeavor to select a third member who shall serve as chairman, in which event the compensation and expenses of the chairman shall be borne equally by the parties to the proceeding. All other expenses shall be borne by the party incurring them. Should the two members be unable to agree upon the appointment of the third member within ten days, either party may request the National Mediation Board to appoint the third member, whose compensation and expenses shall then be paid in accordance with existing law. The decision of the majority of the arbitration committee shall be final and binding.

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Carrier argues that the Board has no jurisdiction to resolve this dispute while Petitioner urges that the two merger agreements merely amend the controlling agreement and therefore this Board does have jurisdiction. Since the clear language of the agreements quoted above indicate that the original appellate jurisdiction is reserved to another tribunal, we must reject Petitioner's argument. (See Awards 5667, 6081, 5938, 5835, 6086 and 6102). For these reasons we must dismiss the claim for want of jurisdiction.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Kilken
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1973.