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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6555
Docket No. 6339-I
2-L&N-I-'73

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

Parties to Dispute:

(Loyd Phillips, Petitioner
(
(
(Louisville & Nashville Railroad Company

Dispute: Claim of Employees:

Loyd Phillips prays the National Railroad Adjustment Board to find that his discharge or "furlough" of July 30, 1971, was as a consequence of the merger of the Louisville and Nashville and the Monon Railroad Companies, so that he was thereby placed in a worse position with respect to his employment, contrary to the provisions of Section 5(2)(f) of the Interstate Commerce Act, and of the agreement of April 5, 1971, for Protection of Shop Craft Employees represented by the Railway Employees Department, A. F. L. - C. I. O, which agreement incorporates the provisions of Section 5(2)(f) of the Interstate Commerce Act.

The relevant parts of the Act and the Agreement read as follows:

"In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transactions (mergers) will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment." (Act cited at page 2 of the Agreement, the relevant parts of which are attached hereto)

"...(I)n accordance with the last sentence of Section 5(2) (f) of the Interstate Commerce Act above quoted, the parties hereto have reached agreement respecting the protection to be afforded employees of the said carrier." (Act cited at page 2 of Agreement)

Should the Board find Phillips' employment position was worsened by the above mentioned merger, it should then find that he is entitled to reinstatement in Active Status, and to back pay from August 1, 1971.

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.

The record in this case discloses that the claim was not handled on the property in accordance with the applicable rule (Rule 58 $\frac{1}{2}$) of the collective bargaining Agreement. The claim was neither timely filed nor was it presented to the appropriate officers of the Carrier on the property, in accordance with the Agreement. Lack of experience in the procedure cannot overcome this deficiency (see Award 5250).

Section 3, First (i), of the Railway Labor Act provides in part:

"...disputes between an employee...and a carrier..growing out of grievances...shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this matter, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board...."

It is apparent from the record that the claim in this case was not handled on the property of the Carrier in accordance with the provisions of the applicable Agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The Claim is therefore barred from consideration by this Division and will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of July, 1973.