Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7261
Docket No. 6947-I
2-B&O-I-'77

The Second Division consisted of the regular members and in addition Referee C. Robert Roadley when award was rendered.

Parties to Dispute: (Shirley P. Getty
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

The Baltimore and Ohio Railroad Company, Chessie System, has improperly refused to permit Mr. Shirley P. Getty, who is physically able, to resume service as a machinist with the Railroad. Mr. Getty has been found physically qualified to resume service as a machinist by independent medical doctors, but the Railroad arbitrarily continues to deny him the right to return to work.

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 were given due notice of hearing thereon.

The record shows that the initial claim, as submitted on the property, was in the form of a letter from Claimant's counsel to the Carrier, dated July 25, 1973. The letter stated, in pertinent part, as follows:

> "... On behalf of our client, we, therefore, request that the appropriate steps be taken promptly to reinstate Mr. Getty with all seniority rights and benefits.
>
> ...if such action to allow our client to return to work is not initiated within one month, we shall immediately file a lawsuit and commence other appropriate legal proceedings to secure his reinstatement. In connection with such legal action, claims shall be made for lost compensation and other benefits which our client would have received, if he had not been wrongfully refused employment." (emphasis added)

The foregoing request for reinstatement was declined by the Carrier, by letter to counsel dated August 13, 1973, stating, in part, "that Mr. Getty is not physically qualified to perform railroad service." This letter was written by Mr. W. D. Eyerly, Superintendent Shops.

On August 26, 1974, counsel for the Claimant next wrote to Carrier and stated, in part, as follows:

> "... On behalf of our client, we, therefore, request that the appropriate steps be taken promptly to reinstate Mr. Getty with all seniority rights and benefits."

Under date of December 5, 1974, counsel for Claimant wrote the Carrier's Assistant Vice President-Labor Relations and stated, in part:

> "We hereby appeal from the decision of Mr. Eyerly and request reinstatement of Mr. Getty and all of his rights and benefits and make claim for lost wages and other benefits due him..." (emphasis added)

Finally, the "statement of claim" as submitted to the Adjustment Board by counsel in behalf of Claimant, reads as follows:

> "Briefly, the question involved is whether the Baltimore and Ohio Railroad Company, Chessie System, may continue to refuse to permit Mr. Getty, who is physically able, to resume service as a machinist with the railroad. Mr. Getty has been found physically qualified to resume service as a machinist by independent medical doctors, but the railroad arbitrarily denies him the right to return to work."

A review of the foregoing chronology clearly highlights the following inconsistencies:

1. The July 25, 1973 letter refers solely to seniority rights and benefits. The matter of "lost compensation" was held in abeyance pending the filing of a lawsuit if action favorable to Claimant was not initiated within one month of letter date;

2. This request for reinstatement was timely denied by Carrier, by letter dated August 13, 1973;

3. The letter of August 26, 1974, makes no reference at all to the denial letter;

4. The appeal letter, dated December 5, 1974, to the highest officer of the Carrier designated to receive appeals, makes claim (for the first time) for lost wages;

5. The claim as submitted to the Board makes no reference as to precisely what is being claimed, i.e. it does not refer to seniority rights, benefits, wages, or which Rule/s of the controlling Agreement between the parties has been violated, if any.

It is clear that the claim was altered during "handling" on the property and lost its meaningful identity entirely when it finally was submitted to the Board merely in the form of a question. The claim, as submitted to the Board, is vague and lacks specificity; it does not urge reinstatement, restoration of seniority (if in fact Claimant has lost his seniority), restoration of benefits (unspecified) or compensation for lost wages, nor was there any allegation made in behalf of Claimant that any of the rules in the controlling Agreement had been violated by the Carrier. On this basis alone we would be constrained to dismiss the claim.

In addition to the foregoing procedural defects noted in the handling and presentation of this dispute we draw attention to applicable statutory obligations placed upon all carriers and their employees.

Section 2, First, of the Railway Labor Act, contains the following:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise,..."

Section 2, Second, of the Act, states:

> "Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." (emphasis added)

Section 2, Sixth, of the Act, states in pertinent part:

> "Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after receipt of notice of desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: ... That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties." (emphasis added)

Section 3, First (i), of the Act - relating to the National Railroad Adjustment Board - states, in pertinent part:

> "(i) The disputes between an employee ... and a carrier ... growing out of grievances ... shall be handled in the usual manner up to an including the chief operating officer of the carrier designated to handle such disputes;"

Rule 33 - Claims and Grievances, of the current Agreement between the Carrier and the employees contains the following, in pertinent part:

> "Should any employee, subject to this agreement, believe he has been unjustly dealt with, or any provisions of this agreement have been violated, the case shall be handled as follows:" (emphasis added)

This rule then sets forth the agreed upon steps to be followed from the date of occurrence on this the claim or grievance is based up to and including submission (if necessary) to the appropriate Division of the Adjustment Board. The rule is relatively standard in format and provides a time limit of sixty (60) days for each step in the procedure, including the taking of an appeal, up to the highest officer designated by the Carrier. In the event the decision of the highest officer is to be appealed to the Adjustment Board such action must be instituted within nine (9) months from date of such decision. The rule provides for extension of the time limits by agreement between the parties.

Section 7, of Rule 33, states as follows:

> "7. In applying time limits set forth in this rule, the sixty-day time limit for highest appeal officer to make reply shall run from the date of conference at which the claim or grievance is discussed. The nine-month period shall date from the date of written decision of Carrier's highest officer." (emphasis added)

Even a casual reading of the foregoing clearly shows that there is a statutory as well as an Agreement obligation that grievances shall be handled expeditiously in conference between the parties. Exchanges of correspondence do not constitute conference as contemplated either by the Railway Labor Act or by the Agreement.

The record before us fails to show that any conference between Claimant's attorney and the Carrier representative/s was ever held at any stage in the proceedings, nor was a conference requested. The omission of this mandatory procedural step is a bar to consideration of this dispute on its merits.

Additionally, the record clearly shows that a period of more than one year lapsed between the declination by the Superintendent Shops, Mr. Eyerly, and the appeal letter to the highest officer of the Carrier, notwithstanding the sixty-day time limit set forth in the Agreement.

The number of awards of the Adjustment Board are legion in support of the conclusive observations set forth herein. For the sake of brevity we will cite only the following as being illustrative of the point:

1. Regarding the submission of an altered claim:

Second Division Award No. 6657 stated in part:

"A review of the claim as it was handled on the property and as submitted to this Board reveals that the claim as originally submitted was changed on the property and further amended when it was presented to this Board. It is our opinion that the claim now before us is substantially at a variance with the claim handled on the property. Consequently, we are left no alternative other than to conclude that the claim is procedurally defective as it violates Section 3, First (i) of the Railway Labor Act, compelling a dismissal without reaching the merits thereof."

2. Regarding the matter of obligatory conferences:

Third Division Award No. 15880 stated in part:

"As a general proposition, it is well established by a long line of awards by this Board that the failure to have a conference on the property precludes consideration of the merits of the claim. The rationale of most of these awards is that the provisions of Section 2, Second and Section 2, Sixth of the Railway Labor Act are mandatory in their requirement that a conference be held, and absent such conference, the Board has no jurisdiction. See Awards Nos. 14873, 14847, 13721, 13120 and 13097."

3. Regarding the matter of time limits:

Second Division Award No. 7021 stated in part:

"In this connection, we have held repeatedly that the Agreement must be construed as written and that precise time limits are mandatory upon the parties and must be complied with. Prior Awards on this established principle are legion and need hardly be cited."

Based upon the state of the record before us it is clear that the subject claim was altered on the property and amended when submitted to the Board; that mandatory conferences were not held on the property; and that the time limits set forth in the Agreement were not complied with. Any one of the foregoing is sufficient to justify a dismissal of the claim and when considered in consort we are left with no alternative but to dismiss the claim on the grounds of procedural defects, without reaching the merits thereof.

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 5th day of April, 1977.