

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

Parties to Dispute: (Vance Poteet
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

Mr. Vance Poteet began working for the railroad as a carpenter on the Bridge and Building Gang, Maintenance of Way International Union, in 1967. In January of 1973, his supervisor, Ronald Dietrich, offered Mr. Poteet a "Water Service" job, at a higher rate of pay, in the Sheet Metal Workers' International Association. At the same time, Supervisor Dietrich informed Mr. Poteet that former employee Charlie Groves, who was laid off, or fired in 1969, would not be returning to work since the railroad had not heard from him in about four (4) years. Armed with this assurance from his immediate supervisor, Mr. Poteet took the "Water Service" job, leaving Maintenance of Way and going into Sheet Metal Workers' with new seniority. Mr. Poteet then worked from January 1973 up to February of 1975 on the "Water Service" job.

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 employees 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.

Claimant Vance Poteet entered service of Carrier in 1967 and worked until 1973 as a Carpenter in the Bridges and Buildings Division in a craft or class represented by the Brotherhood of Maintenance of Way Employees (BMWE). In January 1973 he transferred to the Water Service Division into a higher paying job to fill a vacancy occurring with the retirement of one Wiesmantel who had filled the job since 1970 when one Charlie Groves was furloughed. Poteet asserts that he had the Water Service Repairman job with certain assurances from Mr. Ronald Dietrich, a Supervisor, that Groves would not be called back. In taking the Water Service job Poteet left the BMWE craft or class and came under the jurisdiction of the Sheet Metal Workers'

International Association (SMWIA) which represents the Water Department employees. In so doing he became the junior man in the Water Service Division, represented by SMWIA, and gave up his seniority in the Bridge and Building, represented by BMW. Some two years later Mr. Groves, who had been furloughed in 1970, came back seeking his former job and, at the insistence of SMWIA, Carrier allowed Groves to exercise his accrued seniority and bump Poteet out of the Water Service job. Poteet had insufficient seniority to obtain another position in the SMWIA unit, he had given up his seniority in the BMW unit and, consequently, he was furloughed by Carrier effective February, 1975.

Carrier at the outset denied none of the foregoing facts but asserts procedural/jurisdictional objections and urges dismissal on those bases. Specifically, Carrier contends that the following points prove fatal to the claim: 1) The Second Division has no jurisdiction over that portion of the dispute involving BMW, since that Organization is subject to the Third Division; 2) No Third Party Notice has been given to BMW, to which as interested third parties, they are entitled; 3) The claim alleges violations of the Railway Labor Act, which it is not our prerogative to adjudicate; 4) The claim was untimely and not properly filed in the first instance and not handled thereafter as required by the Agreement; 5) The claim was amended in its progression to the Board; 6) No conference was held on the property; 7) The claim cited no rule of the current Agreement as being violated.

Claimant, through his Counsel refutes the assertions that no conference was held, by asserting that he made repeated, but unsuccessful, attempts to schedule such on property meeting with Carrier's representatives, but was rebuffed in those efforts. Also, contrary to Carrier's contention, the record does establish that there was actual third party notice to BMW throughout handling on the property and formal Third Party Notice through our Board prior to hearing, but that Organization chose not to appear. (It should also be noted that due to inclement weather Carrier representatives were unable to attend our hearing. However, Carrier telephoned a waiver of its right to appear and in the absence of objection from Counsel for Claimant, we proceeded in the absence of Carrier).

Even if arguendo, Claimant has overcome some of the jurisdictional objections voiced by Carrier, there remains the unrefuted fatal fact that the claim was not filed until August 24, 1976, although Mr. Poteet was furloughed on February 1, 1975. The Railway Labor Act requires that before coming to the Board disputes "shall be handled in the usual manner" on the property. For our purpose the "usual manner" is established by the controlling Agreement, which in this case is the National Agreement of August 21, 1954 at Article V, First, the so-called Time Limit on Claims Rule. That Rule, binding on the parties to this dispute, requires that all claims or grievances must be submitted in writing within 60 days of occurrence to the Carrier Officer authorized to receive same. In this particular case the authorized agent for receipt of the grievance in the first instance was the Foreman, with subsequent appeal rights to the Carrier's Vice President, Administration, before coming to our Board. The facts show that the instant claim was

presented not within 60 days, but some nineteen (19) months after occurrence; and was submitted not to the Foreman, but leapfrogged directly to the highest appeals officer. We cannot ignore these basic defects which render this claim defective. Nor can we treat them as "mere technicalities" as urged by Claimant and go to the merits of the case to "right a wrong" or to "do basic justice as a matter of equity and good conscience". We are not the Chancery Court, but rather a statutorily established Board of Adjustment. We take our mandate and our authority from the Act and from the Agreements which bind us just as they do the parties, which come before us. Where, as here, a claim is void ab initio, we simply have no jurisdiction to reach the merits, whatever we might think of the equities involved. In the face of a clear failure to comply with the time limits, we have no alternative but to dismiss the claim as barred from consideration. We do so without reaching or expressing any view on the merits. See Awards 6484, 6496, 6506, 6810, 6829, 6874, 6980 et al.

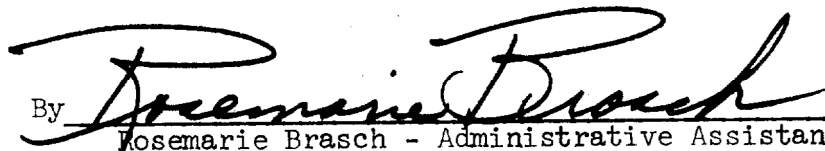
A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of January, 1978.

