

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: ( Gerald J. Dimmen  
 ( Burlington Northern Inc.

Dispute: Claim of Employee:

Employee/Petitioner contends (1) that he has a valid grievance which is set forth in Exhibit 1 attached hereto and which is a continuing violation of the Current Agreement between Burlington Northern, Inc. and its Mechanical Employees; and (2) that he has been deprived of representation by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers as can be ascertained in the various exhibits attached hereto and as related in the Statement of Facts herein.

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 dispute were given due notice of hearing thereon.

This is a claim involving Claimant's allegation of wrongful abolishment of his blacksmith position on June 11, 1976, after which he accepted a comparable position as a boilermaker.

Our review of the claim indicates that it seems to request that Claimant:

"... is not qualified to hold a position as boilermaker and that he should be restored to his blacksmith position with seniority as of September 14, 1970, that he has been placed in a worse position under the protective benefits of the current Agreement and the Washington Job Protection Agreement of May, 1936 with respect to rules governing working conditions due to transfer of work by the carrier, that he should be regarded as being deprived of employment."

However, at the hearing before the Board, the attorney for the Claimant, Mr. Sax, stated that the Claimant was not seeking the right to transfer his seniority rights from the blacksmith's job to the boilermaker job.

Before we can consider the merits of the claim before us, there are two procedural issues which we must review to determine if we may look into the merits of the dispute. Claimant's asserted grievance, in reality, comes from the protective benefits contained in Articles I and II of the September 25, 1964 National Agreement, and we note that the claim quotes extensively from the Washington Job Protection Agreement, which is incorporated by reference and direct quotation into Articles I and II of the Agreement. The grievance also quotes directly from the September 25, 1964 National Agreement, and there is no doubt that the basis for this grievance is firmly based in the 1964 Agreement, supra. This Agreement establishes special grievance machinery, under Article VI, to adjusting and deciding disputes:

"... which may arise under Article I, Employee Protection and Article II, Subcontracting..."

and that Board has been in existence well over a decade. In Award 6086, this Board held:

"Clearly even from a perfunctory reading of the above pertinent provisions of the September 25, 1964 Agreement, the parties have effectively removed any disputes arising under that Agreement from the jurisdiction of this Board. Once the parties have mutually agreed to the establishment of certain procedures and machinery to the establishment of certain procedures and machinery to resolve disputes and specifically removed this Board from assuming jurisdiction, we have no alternative other than to dismiss the instant claim..."

Of similar findings are our Awards 5667, 5668, 5750, 5937, 6081, 6102, 6543 and 7194, among numerous others. We accordingly reach the same conclusion here, and there is no basis for us, in light of the foregoing, to consider time limit arguments raised by either party to this dispute.

A W A R D

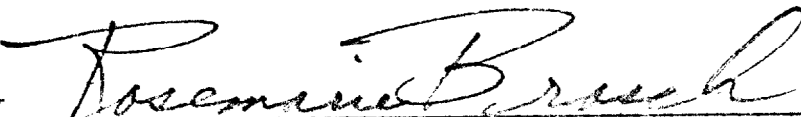
Claim dismissed.

Form 1  
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Award No. 8129  
Docket No. 8018-I  
2-BNI-I-'79

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 27th day of September, 1979.