

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Joseph R. Bandy
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

"The Claimant, Joseph R. Bandy, claims that he has been deprived by Norfolk and Western Railway Company of \$48,419.94 in back wages to this point accumulating as here and below set out and reinstatement as to seniority and reinstatement on the 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 employee or employees involved in this dispute are respectively carrier and employees 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 Claimant involved in the instant case entered the service of the Carrier as a laborer at Carrier's Roanoke, Virginia shops on September 21, 1950. Later he was upgraded (promoted) to the position of Helper Machinist, then as Helper Apprentice Machinist and finally as Machinist on January 21, 1957. All of these positions were at Carrier's Roanoke shops. Claimant was furloughed from Carrier service in a reduction of forces on February 20, 1958. He was recalled to service in August of 1973. Effective May 21, 1973, Claimant was awarded an annuity under Section 3 (a) of the Railroad Retirement Act. The above cited facts of the record does not appear to be in dispute.

Carrier also alleges that in 1978 Claimant "expressed a desire to return to work with the Carrier". But that based on reports from three physicians as well as from Carrier's Medical Staff, he was not allowed to do so, and show as Exhibits an exchange of letters between different doctors, none of which are particularly helpful.

The Claimant in his submission alleges that:

"On April 10, 1978 the Claimant after requesting a medical examination to determine his fitness to return to work was given a back to work order on that date (a copy of which is hereto annexed, marked Exhibit A and made a part hereon)."

The Claimant also shows considerable correspondence and again none of which is particularly helpful. There is also considerable disagreement between the parties involved including disagreement among the doctors insofar as Claimant's physical capabilities and alleged infirmities is concerned and his ability or lack of same to perform the work of a Machinist.

However, before giving any consideration to any of the evidence or to the claims or contentions of either party as to Claimant's request and Carrier's refusal to return said Claimant to Carrier service, this Board must make a determination as to whether or not this claim is properly before this Board, and whether or not this Board has jurisdiction to decide the issues raised in the Claimant's submission.

Carrier alleges that this Board:

"Lacks jurisdiction to hear and decide this dispute by reason of the fact that this claim has not been perfected on the property in the usual and customary manner as prescribed by Section 3, First (i) of the Railway Labor Act, 45 USCA Chapter 8."

and further that:

"The instant case is improperly before this Board for the following reasons:

1. No claim/grievance was timely initiated.
2. No claim/grievance was handled in the usual manner on the property in accordance with the provisions of the current Agreement.
3. No Rule of the current Agreement or otherwise was cited during handling on the property.
4. No conference to discuss this matter with the highest officer of the Carrier designated to handle such matters was requested or held.
5. There is no dispute growing out of the Agreements pending between proper parties which has been timely or properly handled on the property."

In regards to Carrier's contention No. 1. a diligent search of the record reveals that there was no claim/grievance submitted at any stage of the grievance procedure. The closest that we can come, is the letter from Claimant's attorney dated February 23, 1981 and addressed to Carrier's Vice President of Labor Relations and reading in part:

"It would appear that Mr. Bandy is not only whole and healthy but he is perfectly capable of performing all of the duties as a machinist, not only that, but he is ready to work until full retirement.

I would suggest that you give consideration to returning Mr. Bandy to work to such adjustments in pay as we may agree upon since his layoff and, of course, if he cannot do the job that is another matter, but I think you will find that he is not only able to do the job but has been able for a long time, even since his layoff."

Even if the above cited letter had been timely filed as a claim, and it was not, and even if it had been sent to the first Carrier Officer in the line of appeal, but it was not, it would not fulfill their requirements of a "proper claim" as it merely asks the Carrier to "give consideration" making it optional to the Carrier and also is something that Carrier has already done and decided against. The fact that no claim was submitted is also shown in Claimant's submission page 4 in which they write in part:

"For this reason a claim was not submitted to this Board..."

Therefore, Carrier's contention number 1, is correct and for the same reason Carrier's contention number 2 is correct.

Insofar as Rule violation not cited, here again the closest we can come is in page 2 of Claimant's submission paragraph 7, wherein they refer to "violation of its contract" but without citing any Rule. This type of scatter gun allegation does not satisfy the requirements of a specific Rule violation. We find that Carrier's contention number 3 is correct.

No conference to discuss the matter, Section 2, Second of the Railway Labor Act, reads in part:

"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 there interested in the dispute."

The above cited provision of the Railway Labor Act is clear, unambiguous and specific. It refers to all disputes. There is no exception, and a careful check of both submissions and all correspondence reveals that no conference was asked, no conference was granted, no conference was held. A clear disregard to the provisions of the Railway Labor Act. We find Carrier's contention number 4 to be correct. This claim clearly is improperly before this Board and must be dismissed.

Form 1
Page 4

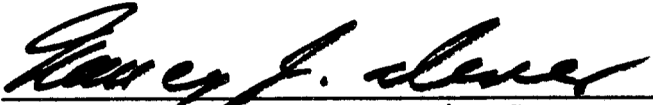
Award No. 9884
Docket No. 9718-I
2-N&W-I-'84

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984