

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10404
Docket No. 10282
2-AT&SF-MA-'85

The Second Division consisted of the regular members and
in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist T. E. Young (hereinafter referred to as Claimant) from service on August 20, 1981.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired, with compensation for all wage loss.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds and holds:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 entered the service of the Carrier on January 17, 1972.

In a letter dated January 27, 1981, the Carrier informed the Claimant of an investigation to be held on February 5, 1981 in connection with the "possible violation of Rule 13", General Rules for the Guidance of Employees" concerning his alleged absence from duty in excess of 10 calendar days since January 15, 1981. The letter went on to state that the absence was not covered by a formal leave of absence.

As a result of the investigation that was held on July 30, 1981 the Claimant was removed from service, effective August 20, 1981, for having violated Rule 13. In a letter dated October 4, 1981 to the Carrier, the General Chairman appealed this decision.

The Claimant, in a letter postmarked October 16, 1981, notified the National Railroad Adjustment Board of his intent to file an Ex Parte Submission with the Board. The claim was carried to the Second Division where this Board dismissed the claim after stating the following:

"Carrier moves to dismiss for the reason that the claim is not properly before the Board since Claimant failed to exhaust appeals on the property before filing with the Board. It is clear from the record that there is merit to Carrier's argument and that Claimant's Ex Parte Submission to the Board was premature. The Railway Labor Act, Rule 39 of the Agreement, and Circular No. 1 require that claims be filed, progressed and conferenced on the property prior to submission to the Board." (Award No. 9475).

In light of the Claimant's separate action which culminated in Award No. 9475, the instant claim is not properly before the Board. The outcome of the investigation that was held on July 30, 1981 produced two (2) claims; one claim filed by the Claimant and the other filed by the Organization which is before this Board. In his individual action which was disposed of in Award No. 9475, the Claimant alleged procedural errors; in the instant case the Organization requests the Board to review the case on the merits. The processing of separate claims arising out of the same incident is highly improper, since it places the Carrier in the untenable position of having to defend itself twice in separate actions and at different times. In this connection the Board refers to the following excerpt from Fourth Division Award 474:

**** The violation having been decreed and remedial action having been secured through Award No. 272, the petitioner now seeks compensation for the period during which the yard clerk performed the services of an Assistant Yardmaster. The phrases 'effective the date hereof' and 'as of this date' used in the finding and award may themselves have been intended to foreclose any monetary claim for the period preceding the establishment of the position of Assistant Yardmaster; but entirely apart from this language, Award No. 272, in connection with which no monetary claim was made, must be held to have concluded the entire dispute. Such splitting up of controversies as is here involved is neither fair to the carrier nor conducive to the effective performance of the Board's work. In Award No. 1215, the Third Division said: 'There is neither reason nor justice in a rule which would permit an employee to divide a question into as many parts as may suit his convenience, without regard to the inconvenience thereby occasioned his adversary'; and in Award No. 6334, the First Division said: 'The question is whether the same controversy may be brought to this Division piecemeal, a practice which would seem not to be contemplated by the provision of Section 3 (m) of the Railway Labor Act, and which is neither fair to the parties nor proper practice if the Division is to function efficiently. This Division hereby definitely adopts the rule that controversies are not divisible and may not be brought to it separately as protest and as claim for compensation.' These pronouncements approve themselves to this Division and are clearly applicable to the instant proceeding."

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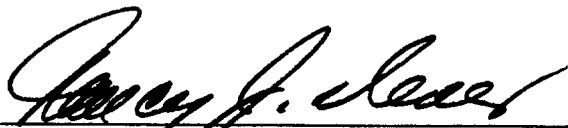
The reasons set forth in Award No. 474 are entitled to great weight and are applicable to the instant claim. Accordingly, the instant claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1985.