

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11134
Docket No. 11172-I
2-IOWA-I-CM-'87

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Kermit D. Alexander
Parties to Dispute: (
(Iowa Interstate Railroad

Dispute: Claim of Employees:

Violation of Section 105 of the Rock Island Railroad Transition and Employee Assistance (sic) Act (45 U.S.C. 1004) AND/OR Section 703 and/or 704 of the Regional Railroad Reorganization Act, in that the Iowa Interstate Railroad hired four (4) carmen, all former Rock Island Lines employees, that were hired by other carriers denieing (sic) me gamefull (sic) employment with same railroad.

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 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 waived right of appearance at hearing thereon.

The Claimant, a former Carman with the Chicago, Rock Island, and Pacific Railroad, was in service with that Carrier from September 16, 1954 through March 31, 1980, at which time the Rock Island ceased operations. The Carrier, Iowa Interstate Railroad, is operating on lines formerly operated by the Rock Island Railroad and, subsequently, the Iowa Railroad Company.

The Claimant argued the Carrier had violated Section 105 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004) and/or Section 703 and/or 704 of the Regional Railroad Reorganizational Act. The Claimant stated he has met the requirements for the right of first hire and yet the Carrier hired four Carmen who had been employed by other Carriers prior to their employment with Iowa Interstate Railroad. The Carrier commenced operations on November 1, 1984, and had placed ads in local newspapers in the month of September, 1984, for new employees. In addition the Carrier gave applications to the employees of the former Iowa Railroad, which was in bankruptcy proceedings at that time. The Claimant alleged the Carrier did not

make use of the Central Register as provided for in the Regional Railroad Reorganizational Act and that, almost without exception, all former employees of the Iowa Railroad were hired by the Carrier. The Claimant stated that his name appears on the Central Register of available employees, as well as the job service of Illinois and Iowa. The Claimant states that the four Carmen alluded to above were hired after employment by railroads other than the Chicago, Rock Island, and Pacific Railroad; therefore, they gave up their right of first hire. The Claimant states he has never worked for a subsequent operation or for any other railroad and, therefore, is in the position of having the right of first hire. He stated that he is fully qualified for these jobs and noted he is a certified welder.

The Carrier argued that it started up operations in the Fall of 1984 and initially hired 78 employees. Because of the requirement that the Carrier be able to commence operations immediately, the Carrier needed to hire fully experienced personnel who were familiar with the operations of the line. While the Carrier doubts it was bound by the right to hire statutes cited by the Claimant, it asserted that it carefully followed the terms and conditions of those statutes. The Carrier denied that the Claimant has greater rights than other employees the Carrier hired at this time, and the Carrier would have rejected the Claimant when comparing his qualifications to those of the employees that were hired. The Claimant submitted an application to the Carrier on September 10, 1984. The Carrier considered the Claimant's application, but he was not offered employment. The Carrier did hire four other Carmen, all of whom had been involuntarily furloughed from the Rock Island between September 30, 1979 and April 1, 1984, and they were determined by the Carrier to be more qualified than the Petitioner. The Claimant was placed on a waiting list in November, 1984, and has been considered for employment from time to time. The Claimant's former Supervisor has indicated the Claimant "needs a great deal of supervision" and has recommended that the Carrier not hire the Claimant. The Carrier stated that it acted in accordance with the terms and conditions of the right to hire statutes in that employment by a successor line gives them the same statutory hiring preference as those who were furloughed by the Rock Island between 1979 and 1984. Also, the Regional Railroad Reorganizational Act applies to any employee deprived of employment. This has been confirmed by the Railroad Retirement Board. The Carrier further argued that the National Railroad Adjustment Board has no right to grant the relief suggested by the Claimant in this matter in that such relief is beyond the scope of the Board's jurisdiction.

Upon complete review of the evidence, the Board finds as follows; the Railway Labor Act is the Act under which the National Railroad Adjustment Board operates, and its language is specific and clear with respect to claims. Claims must be handled in the "usual manner on the property." The purpose for this procedure is to create a record that would allow this Board an opportunity to properly review the merits of the case. In this instance, the Claimant did not follow the proper procedure and, as a result, there is no appropriate record for the Board to review. There is much argument in each Submission but little proof. The Railroad Reorganizational Act incorporates the Railway Labor Act, which states in pertinent part:

"(i) The disputes between an employee or group of employees and the Carrier or Carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of facts and all supporting data bearing upon the disputes."

It is the Claimant that is bringing this matter. It is the Claimant's responsibility to follow the proper procedure. The record shows that, among other things, a conference was not held on the property, and the Claim was not advanced as required. Because of this defect, the Board was not given a complete record on which it can base a reasonable decision; and because of this procedural defect, the Claimant did not advance his Claim as required by the statute, and the Board has no alternative but to dismiss the Claim without ruling on the merits of the case.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1987.