

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (James O'Leary
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company erred and violated the contractual rights of Mr. James O'Leary, when they contracted out the work of operation, servicing and or repairing of the Drott travel Lift to the lessor or seller.

2. That the carrier further, violated the contractual rights of Mr. O'Leary by transferring Diesel Locomotives work from Phoenix.

3. That, the Claimant, was deprived of employment and placed in a worse position as a result thereof.

4. That, the carrier failed to give sixty days, ninety days in cases where change of residence is required, written notice of the abolishment of the position.

5. That, therefore I be provided with the protective benefits as accorded by Article I of the September 25, 1964 Agreement or be compensated for lost earnings, including loss of overtime, vacation rights and other benefits not specifically mentioned herein that I would have earned, received or been entitled to.

6. That, this is a continuing claim.

7. Mi Jack Products stop work at Glendale at once, because warranty period expired Jan. 1982.

8. That because of the merger of Atchison, Topeka and Santa Fe Railway and Southern Pacific the carrier is only force reducing (sic) where a duplication of forces are, because of merger.

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 governing Agreement is the September 25, 1964 Protective Agreement as amended in 1975. That Agreement reads in pertinent part:

"The parties agree that such Board shall have exclusive authority to resolve all disputes arising under the terms of Articles I & II of this Agreement, as amended by the Agreement of December 4, 1975. Awards of the Board shall be subject to judicial review by proceedings in the United States District Court in the same manner and subject to the same provisions that apply to awards of the National Railroad Adjustment Board."

Boards obtain their jurisdiction for authority to hear and resolve disputes either from a statute or from agreement between the parties thereto. Because the Organization is the representative of the employees it represents, its agreement binds all of those members. Jurisdiction goes to the very essence of the power of a Board. If it exceeds its jurisdiction, it is subject to reversal in the United States District Court.

In this instance the parties to the 1964 Agreement, as amended, agreed to establish a Special Board of Adjustment and empower this Special Board with exclusive jurisdiction to resolve any matters that are claimed to be within the scope of its subject matter jurisdiction. If the claim falls within that jurisdiction, this Board has no authority to hear the matter.

Clearly the allegation falls within the purview of the 1964 Agreement. In the handling of the Claim on the property, Claimant's Representative stated by letter to the Carrier:

"It is the position of the Employees that the Carrier is in violation of Article I, Section 1, 2a, 2c, 2d and 4 of the September 25, 1964 Agreement, in that the Claimant was deprived of work and force reduced as the result of Carrier allowing Mi-Jack Products to perform repairs, maintenance, and operation of the Drott Travel Lift at Phoenix (Glendale), Arizona.

The Carrier is in further violation of the aforementioned rules by transferring the work of 46 day inspections, 15 day inspections and 240 repairs, per year, of Diesel locomotives at Phoenix, Arizona."

Form 1
Page 3

Award No. 11176
Docket No. 10979-I
2-AT&SF-I-EW-'87

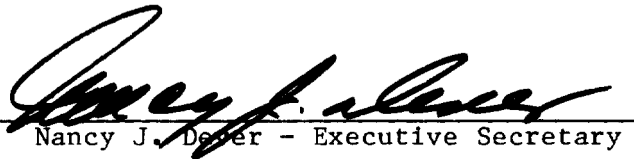
This Board has no jurisdiction to hear the proffered Claim before it.
Therefore, we will dismiss the same.

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 25th day of February 1987.