

Parties to Dispute: (Dennis B. Gravert
(
(Chicago and North Western Transportation
(Company

Dispute: Claim of Employees:

The Petitioner, Dennis B. Gravert, a former member of the Brotherhood of Railway Carmen of the United States and Canada and Local 595 of Janesville, Wisconsin, claims that he was incorrectly and unjustly expelled from the aforementioned union and that this wrongful expulsion resulted in his discharge from the Respondent carrier, Chicago & Northwestern Transportation Company. The issue for the National Railroad Adjustment Board to decide is whether the Petitioner was properly expelled from the union. If Petitioner was not properly expelled, his termination from employment with the Respondent was without cause and his reinstatement to his former position should be ordered.

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 were given due notice of hearing thereon.

This matter has been advanced to this Board in an attempt to rescind the termination of employment effected through the National Union Shop Agreement.

The facts are not materially in dispute. Claimant had worked for the Carrier approximately six years when in April, 1984, he accepted transfer from Clinton, Iowa, to Janesville, Wisconsin. Over the next fourteen months Claimant continued to work but did not pay the required union dues. The various and many assertions concerning perceived or alleged fault for such failings are not a proper subject for this Board's review. What is pertinent is that the dues were knowingly not paid.

By a letter dated June 17, 1985, the Carrier was notified by the Carman Organization, pursuant to the provisions of Section 5(a) of the Union Shop Agreement effective January 1, 1953, of the Claimant's deficiency. There was a Hearing conducted on the property; an appeal of the decision rendered, and an arbitration proceeding conducted under the jurisdiction of Section 5(c) of the Union Shop Agreement in this matter. Claimant's employment was thereafter terminated effective October 31, 1985. By letter dated December 31, 1986, Notice of the pendency of the present dispute was filed with this Board.

While there are a number of equitable considerations that this Board could use in its disposition of this matter, to do so would be a violation of the statutory constraints within which the jurisdiction of this Board is established. Section 3 First (i) of the Railway Labor Act, as amended, clearly limits the jurisdiction of this Board to disputes concerning:

"the interpretation or application of agreements concerning rates of pay, rules or working conditions...." (Emphasis added).

Thus, our disposition in this matter must be based upon the specific contractual arrangements that the parties have mutually agreed to be bound by. In this regard, the parties have entered into a specific procedure for the resolution of Union Shop disputes that includes a specific provision for the arbitration of such disputes. Section 5(c) of the applicable Union Shop Agreement states in pertinent part:

"The carrier, the organization and the employee involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The carrier, the employee, and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested."

As has been noted, Claimant availed himself of the foregoing and an Award was rendered, pursuant to the foregoing Section, on October 10, 1985, which concluded the following:

"This Arbitrator has reviewed all of the evidence in the case, including the transcript of proceedings of the July 19, 1985, hearing, as well as all of the documents, letters, contracts, and Union Constitution which have been submitted by the parties. This Arbitrator also listened to the extensive arguments of the Claimant, Organization, and Carrier at the appeal hearing on October 4, 1985.

It is clear, beyond a reasonable doubt, that the Claimant did not pay the required union dues during the entire period of his employment in Janesville, Wisconsin, between April 1984 and July 1985, when he was found guilty at the hearing. The Claimant acknowledges that he should have been paying dues for that one-year period, and he admits that he did not pay the dues during that period. He also stated, at the hearing, that he was aware of the Union Shop Agreement between the Carrier the Organization and what could happen if he did not make the required dues payment. Hence, there is no question that the Claimant was knowingly not living up to his obligations to pay the union dues. Pursuant to the Union Shop Agreement between the Organization and the Carrier, once the Organization notifies the Carrier of the failure of an employee to pay regular dues, he must be dismissed from service. Hence the Carrier took the appropriate action when it was notified by the union of the failure of the Claimant.

The Claimant has asserted several reasons for his failure to abide by the requirement of paying dues. However, they all must be rejected."

It is not disputed that all of Claimant's defenses and arguments were fully aired in this matter, and pursuant to the specific language of the Agreement provision, the disposition made is:

"...final and binding upon the parties." (Emphasis added)

The matter having been decided with finality in accordance with the contractual requirement there is no unresolved matter to be decided by this Board. (Third Division Awards 22465, 20714, 20455; Second Division Awards 6692, 8464, 9149, 8373, 8409. First Division Awards 22897, 22736) and this Board is not the appropriate reviewing authority for other arbitrations under the Railway Labor Act.

In *Murry v. Consolidated Rail Corporation* (116 LRRM 2811) which involved an attempt to invalidate an NRAB dismissal Award, holding that the matter had been resolved by a prior Public Law Board decision, the Sixth Circuit Court of Appeals concluded:

"We decline the opportunity to frustrate Congress' primary goal by conferring upon employees the right to challenge the award of one board before the other."

Thus, we must find that the Section 5(c) arbitration proceeding was, and is, conclusive on the parties, leaving nothing that could be properly asserted before this tribunal.

However, Petitioner and counsel have nevertheless advanced this claim to the Board based on a recent decision of the Ninth Circuit Court of Appeals (Crusos v. United Transportation Union, Local 1201, 786 F.2d 970 (1985)). While that matter involved a challenge to the union shop arbitration itself, and no material issue has been raised here of any reason why that proceeding should be ignored by this Board, the Court went on to state:

"Appellant failed to tender his union dues in a timely and acceptable manner, and his suspension from the Union was therefore justified and not discriminatory. A union's decision to avail itself of its rights under its union shop and collective bargaining agreements, and its motive for doing so, do not provide an aggrieved member with a cause of action."

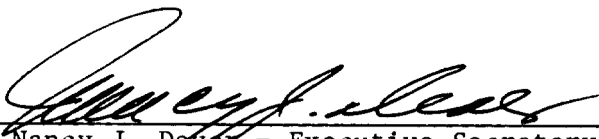
In view of all of the foregoing there is no dispute properly before this Board for resolution and on that basis the present claim must be dismissed.

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 10th day of June 1987.