

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

(Robert W. Roberts

Parties to Dispute: (

(National Railroad Passenger Corporation

Dispute: Claim of Employees:

Entitlement to benefits under Appendix C2 on the grounds that I a "dismissed employee" as defined under Article I (c) of the Appendix C2.

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, Robert W. Roberts, was employed as a Machinist at the Carrier's Fort Worth, Texas facility at the time this dispute arose. On December 7, 1981, the Claimant was displaced from his position by Mr. Glen Mallott. On December 18, 1981, Claimant filed an application for benefits under Section C-2 of the National Railroad Passenger Agreement, alleging that he had been dismissed from his job because Mr. Mallott's job was eliminated, due to the Carrier's decision to discontinue several trains.

The Carrier denied the Claim in February, 1982, stating that "you were not adversely affected due to discontinuance of intercity rail passenger service." The Claimant then submitted this Claim to the Board on May 21, 1982.

As a preliminary matter the Carrier initially asserted that this Board lacks jurisdiction to decide the merits of this Claim. The jurisdictional objection is denied, as this Board has assumed jurisdiction in other similar cases brought by individuals under this Agreement.

Under Article IX of the Agreement, the Carrier has the burden to prove that factors other than a transaction affected the employe. Nevertheless, the Claimant has the initial burden to establish that his dismissal was due to one of the reasons listed in the Agreement. Here the Claimant has failed to do that, but has merely asserted that his dismissal was due to the discontinuance of intercity rail passenger service.

In contrast, the Carrier has submitted documentation showing that the Carrier's reason for abolishing Mr. Mallott's position was not related to the discontinuance of any of the trains cited by the Claimant. Instead, Mr. Mallot's services as a Train Rider were no longer needed because the training services which composed his job were completed. Therefore the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1987.