

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11759  
Docket No. 11534-I  
89-2-87-2-186

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: (J. D. Fuller  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

Claim of J. d. (sic) Fuller due to the carrier violation of Rule 24 wherein (sic) I was assessed termination account of alleged violation of carrier rule Gen. Rule B, 607(4) and 609. Claim is made to restore all lost time wages at prorata, credit lost time toward vacation qualifying days and all benefits lost due to termination.

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.

The Claimant was last employed in a non-agreement supervisory capacity by the Carrier as a road foreman of engines at Salt Lake City, Utah. On October 16, 1986, Claimant was dismissed as an officer on the allegations that he misappropriated Carrier's property. Claimant was charged under Rule 24 of the Machinist's agreement although he had not worked in that status since 1976. As a result of the investigation, Claimant was dismissed as a Machinist on December 8, 1986.

Claimant contends that the alleged misappropriation of Carrier's property occurred while he was working as an officer of the Carrier in a non-agreement capacity. Claimant further contends that he is not covered by any Agreement and, as such, the investigative hearing should not have taken place under the Machinist's agreement.

In his appeal letter of January 12, 1987, the Claimant sought the following remedy:

- "A. Allow me to exercise my rights as a mechanical foreman at Houston, Texas, and pay for my moving expenses from Salt Lake back to that area.
- "B. Either take all of the correspondence off my personal record file and allow me to answer the charges, or give me a proper officer's hearing as required by the EEOC policies of our company. For each day you fail to do so I wish appropriate compensation at the supervisor's rate plus 15% per annum."

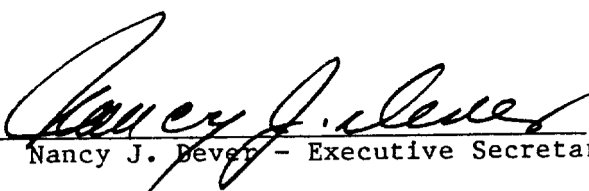
The Claimant is seeking a remedy that is not within the jurisdiction of this Division. Jurisdiction to determine disputes involving carrier officers is vested, if at all, in the Fourth Division of the Board, as set forth in the Railway Labor Act.

The Claim, as appealed, is beyond the jurisdiction of this Division and accordingly must be 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 16th day of August 1989.