

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12934
Docket No. 12873
95-2-94-2-14

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Elkins Carmen
(
(CSX Transportation, Inc. (former
(Baltimore and Ohio Railroad)

STATEMENT OF CLAIM:

"Are the below listed Elkins Carmen entitled to severance pay pursuant to various collective bargaining agreements, including but not limited to the following: Agreement between The Baltimore and Ohio Railroad Company, the Staten Island Railroad Corporation and All That Class of Employees Herein Specified represented by System Federation No. 4 Railway Employees Department, A.F.L. -- C.I.O. Mechanical Section No. 1 Thereof; (1) International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, (2) International Brotherhood of Electrical Workers, (3) Brotherhood Railway Carmen of the United States and Canada, January 1, 1980, and Agreement between carriers represented by the National Railway Labor Conference and Eastern, Western and Southeastern Carriers' Conference Committees and Employees of such Carriers represented by the organizations comprising the railway employees' department, and under Interpretation of the National Vacation Agreement of 1941 § 8(b)?"

Harry G. Bennett	Leslie P. Jones, Jr	Demsey J. Roy
Arthur D. Carr	Gary L. Kisner	Gary L. Roy
Granville A. Carr	Gary Lee Kisner	Jack D. Roy, Jr.
Neil Chenoweth	Joseph E. Kisner	John W. Sanders
John M. Coberly	Stanley F. Lambert	R. D. Schoonover
Ray Corcoran	R. A. Maxson, Jr.	H. M. Shoemaker
Gary A. Crosston	Bobby Morral	Carl O. Simmons
George A. Currence	David L. Moyer	Gary L. Simmons
Charles U. Gear	Ted Newlon	H. B. Stalnaker
Michael L. Gear	Dorman C. Phillips	Willard Tallman
Raymond Hammick	George Plauger, Jr.	Chris Thompson
D. C. Harsh, Jr.	Warden J. Pritt	Robert L. Wetzel
W. G. Huffman	Richard A. Pyles	Douglas White
Robert D. Isner	D. E. Rowan	

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 claim has been raised by a group of approximately forty furloughed employees who are designated here as the Elkins Carmen. They seek a lump sum payment of \$800,000 (or over \$2 million if distributed periodically) in separation pay as a result of their furlough in 1981-1982. (A claim for protection under the September 25, 1964 National Agreement, in which Petitioners alleged that a transfer or an abandonment of work at Elkins had caused the furloughs, was heard before Special Board of Adjustment No. 570 and was denied in Award 775, issued on November 16, 1987.)

On August 2, 1993, Carrier applied to the Interstate Commerce Commission (ICC) for permission to abandon approximately 122 miles of trackage that included the Elkins facility. On or about September 28, 1993, the Elkins Carmen filed a protest with the ICC, seeking a stay of the grant and asking the Commission to investigate the Carmen's claim for severance pay. A copy of their letter was sent to CSX Senior Counsel Charles M. Rosenberger.

By letter dated October 25, 1993, John A. W. Lohmann and Frank P. Bush, Jr., co-counsel for the Carmen, wrote Mr. Rosenberger, providing him with the names of four employees who wished to testify before the ICC and enclosing a affidavit and a letter from two other employees. On October 29, 1993, Mr. Lohmann wrote to Mr. Rosenberger requesting "on behalf of the Carmen pursuant to Rule 33 of the 1980 agreement ('claims and grievances') that CSXT evaluate each individual's claim for severance pay and collective benefits...."

Subsequently, on February 8, 1994, Mr. Lohmann again wrote Mr. Rosenberger to say that since he had not received a disallowance of the grievance, the claim should be considered allowed in accordance with Rule 33(1)(a) of the 1980 Agreement. He also indicated that the issue would be submitted to this Board.

On February 25, 1994, CSXT Senior Counsel N. S. Yovanovic telephoned Mr. Lohmann to advise him that the case he had submitted to this Board was procedurally defective. He followed up with a letter on March 14, 1994, which read in pertinent part:

"In summary, it is CSXT's position that (1) the alleged claim is not payable under Rule 33; (2) the letter of October 29, 1993 to Mr. Rosenberger did not constitute the filing of a grievance; (3) that if it was a grievance it was improperly filed under Rule 33 since it was neither served on the carrier's designated representative nor served by the individual employee or his or her union; (4) there was no attempt to settle the alleged claim with the carrier's highest designated officer; (5) the alleged claim was untimely filed under Rule 33; (6) the alleged claim was not handled in accordance with procedures specified by the Railway Labor Act; (7) Rule 33 does not govern the procedures for an alleged claim for protective benefits or severance pay under either the September 25, 1964 Shop Crafts National Agreement or any ICC protective conditions; and (8) you have not properly filed a claim under either the 1964 Agreement nor the ICC protective conditions. Further, as to the merits of the alleged claim of the Elkins carmen, it is CSXT's position that their claim is without merit, it is governed by the prior award dated November 16, 1987, which is res judicata as to any new claim for protective benefits or severance pay and any such claim would be barred by laches."

At the outset of the Hearing in this dispute, Carrier requested that this claim be dismissed because of alleged procedural and jurisdictional defects. Upon a complete review of the record, this Board finds more than ample support for this request. As a consequence, we must forego any discussion or determination on the merits of the dispute. We reach this conclusion based on the fact that under Section 3, First (i) of the Railway Labor Act and Circular No. 1 of this Board, we may not rule on the merits of a case unless the claim has been progressed in accordance with the Agreement.

According to Section 3, First (i):

"... disputes between an employe... and a carrier... growing out of grievances... 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 matter, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board...."

The onus was on Petitioners in this instance to determine the proper Carrier officer with whom to file the claim and discuss it on the property before progressing it to this Board. The Board finds no substance to Petitioners' charge that Carrier foiled its efforts to do so. To the contrary, it appears that Petitioners rejected Carrier's suggestion that the current claim not be progressed and that efforts be undertaken to cure these defects.

This Board also has serious doubts about the appropriateness of this forum, given that at the time this claim was raised, an abandonment had not yet been effectuated and Oregon Short Line conditions had not been imposed. Petitioners' claim at best was speculative.

For all of these reasons, the claim must be dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.