

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13977
Docket No. 13848
08-2-NRAB-00002-070034
07-2-34

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

(E. C. Babulic
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

“Is Claimant E. C. Babulic a ‘displaced employee’ as defined in the New York Dock protective conditions as a result of the merger between Conrail and Norfolk Southern Railway?”

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.

Claimant Babulic here petitions the Board to award him benefits afforded by the New York Dock (NYD) protective conditions by reason of allegedly having been placed in a worse condition with respect to compensation and working conditions as

a result of the merger between Consolidated Rail Corporation (Conrail) and Carrier.

The voluminous record in this dispute indicates that after entering service as a Carman with Conrail in 1988, Claimant advanced to a covered position as a Mechanical Supervisor in 1992. Subsequently, on July 23, 1998, the Surface Transportation Board (STB) approved the division of Conrail between Carrier and CSX Transportation, Inc. and imposed the NYD employee protective conditions, pursuant to which Mr. Babulic here claims benefits. When the restructuring of Conrail was implemented on June 1, 1999, (Split Date) Claimant's employment transferred to Carrier as a non-agreement Mechanical Supervisor, where he remained until September 2, 2003. He then voluntarily resigned that position and through the normal exercise of his Carman seniority reverted to his former position.

While those events were playing out, Claimant was participating as party Plaintiff in a number of litigations following the Split Date commencing in November, 1999 alleging, *inter alia*, Carrier's breach of the NYD protective provisions and violation of the Racketeer Influenced and Corrupt Organization Act (RICO). Those actions were dismissed by various United States District Courts commencing in May, 2000.

Meanwhile, although Claimant's attorneys put Carrier on notice that they intended to represent Claimant and others relative to what were presumably other NYD-related matters, there appears to have been no further activity in this regard until 2006, seven years after the Split Date when, on June 25, 2006, Claimant submitted a "Request for Entitlement to Benefits" form claiming the benefits now at issue before the Board. On August 14, 2006, Carrier responded, denying the applicability of the NYD conditions to Claimant's situation and asserting that the claim submitted was barred by the doctrine of laches. Neither Claimant nor his attorney responded to that denial. On July 31, 2007, Claimant then notified the National Railroad Adjustment Board, Second Division, of his intent to proceed *pro se* in pursuing his claim.

Carrier contends that the Second Division is an improper forum to resolve this dispute since Article I, Section 11 of the NYD conditions sets forth an exclusive and plenary mechanism for resolving disputes thereunder. Specifically:

“Arbitration of disputes. – (a) In the event the railroad and its employees or their authorized representative cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this Article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing service by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chose shall select a neutral member who shall serve as chairman.”

While arbitration as a means of resolving labor-management disputes is a broadly favored principle under federal labor law and doubts are thus commonly resolved in favor of that process, in this instance Carrier is correct in observing that the jurisdiction of this Board is not unlimited. It plainly does not include cases of this nature. As has been held in numerous prior matters turning on the interpretation or application of NYD conditions, questions of entitlement to such benefits must be resolved exclusively in accordance with the process set forth in the enabling guidelines. See New York Dock Ry.-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60, aff'd sub nom. New York Dock Ry. v. United States, 609 F. 2d 83 (2nd Cir. 1979).

The authority offered by Carrier in support of its position consistently reflects the fact that because the NYD conditions mandate a specialized forum and process for resolution of disputes raising claims such as that presented here, the Board lacks jurisdiction to address the merits of disputes such as this. See, *e.g.*, Second Division Award No. 13265 (Muessig) (1992) (“This Board lacks jurisdiction to resolve disputes arising under the New York Dock conditions, because the New York Dock contains its own arbitration provision.”) Accordingly, the Claim must be dismissed.

Form 1
Page 4

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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 25th day of November 2008.