Award No. 6081
Docket No. 5888-I
2-D&RGW-I-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

JOHN H. PETERS, C. W. INFANGER, R. H. UTTER, C. W. McCLURE, Petitioners

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

The particular questions upon which Petitioners desire an award, are as follows:

1. Did the Respondent comply with subparagraphs (b) and (e), Rule 23 of the General Rules in discharging the Petitioners on October 11, 1968?

2. Were Petitioners deprived of employment as a result of a transfer of work, or an abandonment or consolidation of facilities, or as a result of technological changes in operations of the Respondent within the meaning of Section 2, Article I, of the Mediation Agreement of September 25, 1964?

3. If either of the foregoing questions is answered in the affirmative, what salary, displacement allowance, dismissal allowance, reimbursements, and other benefiits are Petitioners entitled to be paid by Respondent?

PETITIONERS' STATEMENT OF FACTS: On October 11, 1968 the petitioners were full-time employes of the respondent as carmen at the terminal of the respondent at Phippsburg, Colorado, and had approximately the following continuous service with the Respondent as carmen at that location:

C. W. Infanger	16 years
John H. Peters	23 years
R. H. Utter	15½ years
C. W. McClure	5½ years

tember 23, 1969, and (2) a table of alleged car movements for the years 1967 and 1968. Obviously, these things were offered as the matter left the property and were not considered while the matter was on the property. No conference has been had with petitioners on these matters and they should be disregarded by your board. Carrier denies the statements made therein. One glaring example of a repeated misstatement in Petitioner Peters' sworn statement is that petitioners were dismissed. This is incorrect. No dismissal is involved. There are other incorrect statements too, for which reason at this time carrier denies all statements in the statement.

Carrier denies the allegations, affidavits and position of the Petitioners and takes the position they have not established a valid claim.

For all the foregoing reasons the claim must be dismissed account lack of jurisdiction by your board and failure to meet on-the-property procedural rules requirements, or denied for lack of merit, proof or rule violation.

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 employe 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.

On October 10, 1968, Carrier's Master Mechanic J. P. Spiece posted Bulletin P-1 at Phippsburg, Colorado listing the names of Petitioners and notifying them that effective with the close of shift ending Friday, October 11, 1968 at 11:59 P. M., all Carmen assignments would be abolished. That particular bulletin read as follows:

"Denver, Colorado
Oct. 10, 1968

BULLETIN P-1

Account strike of coal miners effective with close of shift ending Friday, October 11, 1968 at 11:59 P. M., all Carmen assignments at Phippsburg, Colo. will be abolished and the following employes will be off in force reduction.

J. H. Peters
C. W. Infanger
R. H. Utter
C. W. McClure

Employes affected desiring to maintain seniority rights must file their address in writing as provided in Rule 23 paragraph 'A' of the current agreement.

/s/ J. P. Spiece
Master Mechanic"

Petitioners by hand written letter dated November 14, 1968 presented a claim to Carrier, alleging a violation of the Agreement specifically alluding to Rule 23-E, the 16 hour notice rule and 23-B, the 5 day notice requirement for reduction in force.

On January 7, 1969, General Car Foreman Olson and Phippsburg General Foreman Willcockson responded to Petitioners' letter and denied the claim.

On March 7, 1969, two of the Petitioners, Peters and Infanger, appealed the above decision to the Master Mechanic. In so doing, however, they altered the original claim by alleging a violation of Supplement "C" Mediation Agreement.

On April 3, 1969, Master Mechanic Allen replied to Petitioners' letter of March 7th denying that the Mediation Agreement had any applicability to the instant case as well as denying all other claims.

At this point, the Petitioners pursued no further action. Thus the facts with which we are confronted are that Petitioners Utter and McClure did not progress their claim beyond the denial letter of January 7, 1969 written by General Car Foreman Olson and Phippsburg General Foreman Willcockson; Petitioners Peters and Infanger did not progress their claim beyond the denial letter of April 3, 1969 by Master Mechanic Allen.

On December 1, 1968, the General Chairman of the Carmen filed a claim for the four Petitioners directly with the highest officer designated to handle claims citing a violation of the September 25, 1964 Mediation Agreement.

On January 27, 1969 the highest officer, the Director of Personnel responded to the above letter and denied the claim.

On May 5, 1969, the General Chairman wrote to the Director of Personnel withdrawing the claim submitted by him on behalf of the four Petitioners, the date of which original claim was December 1, 1968.

From a recitation of the above factual situation, it can be readily ascertained that the time limit provisions of the basic Agreement, that is Rule 31 and Section 1 of Article V of the August 21, 1954 National Agreement were ignored. The claim was not processed through the regular channels as required to the highest officer designated by Carrier to handle such claims; nor was compliance had with the time limit provisions. We therefore must dismiss item No. 1 of the claim, which pertains to Rule 23(a) of the basic Agreement.

Insofar as items 2 and in part item 3 are concerned, wherein a question is posed relative to a possible violation of the Mediation Agreement of September 25, 1964, this is not the proper forum for its resolution. Section 1 of Article VI of that Agreement provides for the establishment of a Shop Craft Special Board of Adjustment for disputes arising under Article I – Employe Protection, and Article II – Subcontracting. The parties also agreed that such disputes are not subject to Section 3, Second of the Railway Labor Act, as amended. This provides that the Carrier and the employes, acting through their representatives may mutually agree to the establishment of a Special Board of Adjustment for the resolution of specified disputes instead of referring them to this Board. Hence under Section 8, Article VI, that Special Board of

Adjustment was given exclusive jurisdiction over grievances concerning the application or interpretation of Article I, Employe Protection, and Article II, Subcontracting.

This Board therefore lacks jurisdiction insofar as item 2 of the claim and that part of item 3 of the claim is concerned insofar as they pertain to the Mediation Agreement of September 25, 1964. As we said in Award No. 5667 (Ives), "The Findings of this Division shall not be construed or interpreted as being prejudicial to any rights that claimants may institute, progress or appeal to another tribunal having original or appellate jurisdiction in the premises, nor is Carrier's right to defend prejudiced by its appearance before this Division."

We adopt this reasoning and dispose of the claim in accordance with the foregoing Findings.

AWARD

Claim disposed of in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 15th day of December, 1970.

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