

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International
(Association
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(Illinois Central Gulf Railroad

Dispute: Claim of Employees:

1. That the carrier on November 7, 1975, improperly furloughed water service repairman, J. R. Sholar, an employee of the Illinois Central Gulf Railroad, headquartered at Fulton, Kentucky, in a manner contrary to the terms of the May 18, 1972, I.C.G. & G.M.&O. Merger Agreement and the Washington Job Protection Agreement.
2. That the carrier compensate the claimant by having the continuous time claim submitted in behalf of claimant, J. R. Sholar.
3. That accordingly, the carrier be ordered to reinstate water service repairman, J. R. Sholar, to the service with all seniority, vacation, health and welfare and life insurance rights unimpaired and compensate the claimant at pro-rate for all time lost because of the aforesaid 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 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 received a letter from a Carrier representative stating:

"This is to inform you that effective the end of the work day November 7, 1975, your position of Water Service Repairman, headquartered at Fulton, Kentucky, is terminated account of force reduction."

At the outset the Board notes that this letter refers to termination of a "position" -- not the termination of an employee. The effect of the

was to place the Claimant in furloughed status. There is no dispute that his seniority alone would not have entitled him to another position.

From the above occurrence, there transpired the following:

(a) Extensive correspondence between the General Chairman and various Carrier personnel concerning the appropriateness of the position termination notice coming from a Supervisor rather than a Division Engineer. This included a letter to the Supervisor, dated January 2, 1976, concluding "... I feel that this abolishment was not processed through the proper channels, therefore Mr. Sholar was unjustly dismissed."

(b) A letter to the Carrier's Director of Labor Relations dated January 28, 1976, which -- after discussion of other matters -- concluded, "I feel that Mr. Sholar should be reinstated and compensated for all time lost and all benefits due him." On March 19, 1976, the Director of Labor Relations replied, stating the claim was improper "since it was not filed with the division engineer within 60 days of the abolishment". (Rule 36-A).

(c) A continuing claim for an alleged violation of the May 18, 1972 Merger Agreement and the Washington Job Protection Agreement, dated February 17, 1976, to the Division Engineer authorized to receive initial claims. This was followed by another letter from the General Chairman on May 16, 1976, asserting no declination of the claim of February 17, 1976, within the required 60 days, and further asserting that the claim should be allowed due to the time limit expiration.

The Board finds that this claim must be dismissed on any or all of the following bases:

1. The Organization claims a violation of the May 18, 1972 Merger Agreement. The Merger Agreement reads in Section 8, in part, as follows:

"In the event any dispute or controversy arises between the New Company and any labor organization signatory to this Agreement with respect to the interpretation or application of any provision of this Agreement or of the Washington Job Protection Agreement or of any implementing agreement entered into between the New Company and individual labor organizations which are parties hereto pertaining to the said transactions, or a dispute over the failure to make, or the terms to be included within, an implementing agreement, which cannot be settled by the New Company and the labor organization or organizations involved within thirty (30) days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consideration and determination."

This provision obviously calls for exclusive resolution of "any dispute ... with respect to the interpretation or application of any provision of this Agreement" through means other than referral to this Board. Thus, the matter is improperly before the Board.

2. Even assuming that the Board has jurisdiction over the matter, the claim is seriously deficient as to time limits on filing. Neither the appeal to the Division Engineer nor the earlier appeal to the Director of Labor Relations was within 60 days of the position termination, as required by Rule 36-A of the "Section B" agreement between the parties.

3. Without exploring them in detail, it appears there are other omissions beside the time requirement in the Organization's processing of the claim on the property.

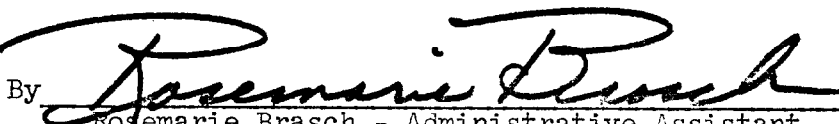
With this, the Board need not inquire as to the merits of the position abolishment.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1978.