

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

Parties to Dispute: (Thomas C. Donahue
(
(Baltimore and Ohio Railroad Company
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

For failure of the B & O-C & O Railroad Company to pay me, Thomas C. Donahue, severance pay as was other machinists when the car building shop at Du Bois, Penna., closed, January 2, 1976.

My side of claims will be submitted in the mentioned Ex Parte submission when filed within 30 days.

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 waived right of appearance at hearing thereon.

Among the B & O's former facilities was a car repair shop known as the DuBois Car Shop (in DuBois, Pennsylvania). It employed various crafts, including Machinists.

As of early 1977, most of the DuBois Car Shop's operations were relocated to the C & O's Raceland Car Shops at Russell, Kentucky. The employes affected by the relocation were protected by an Agreement which had become effective on January 1, 1976 and which carries the title "Agreement for Employee Protection, Benefits and Other Conditions Applicable in Coordinations Involving Employees Represented by the International Association of Machinists and Aerospace Workers and The Chesapeake and Ohio Railway, The Baltimore and Ohio Railroad Company, the Western Maryland Railway Company and the Staten Island Railroad Corporation". A portion of this Agreement reads as follows:

"Employees whose jobs are abolished or who are displaced as a result thereof and who have been neither assigned new positions nor offered such positions pursuant to Section 2 (a) above, and whose seniority is such that they are unable to hold a position on the seniority roster on which working at the time of coordination, and who are not offered a position under paragraph (b) hereof, will be paid a dismissal allowance pursuant to Article III, Section 2. Such an employee may, at his option, at the time of coordination, resign and be subject to a separation allowance computed in accordance with Section 9 of the Washington Job Protection Agreement."

It is concededly true that the relocation of the operations from the B & O DuBois Shop to the C & O Raceland Shop represented a "coordination" as referred to in the Agreement. Affected by the coordination, among other crafts, were three Machinists. Each of them elected to resign, and each of them thus collected the equivalent of a year's pay in separation pay (plus vacation pay, as also called for by the Agreement).

The claimant is a Machinist who had previously worked at the DuBois Car Shop, who held a seniority date of November 13, 1946, and who had been furloughed as of September 17, 1963. On the basis of a series of arguments -- long and loyal service with the Carrier, displacement from work with the Carrier on two past occasions, fairness, discrimination -- the claimant contends that he should have received the same benefits as the three Machinist resignees.

We sympathize with the claimant's joblessness and his apparent conviction that he has been mistreated. But there is simply no proper way to sustain the claim he is making. Each of the other three Machinists was "older" (in terms of seniority standing) than the claimant. In result, they were still working at the DuBois Car Shop at the time of the "coordination" -- whereas he was not. They, accordingly, were covered by the Agreement and entitled to its benefits -- whereas he was not. The claimant is in effect asking us to allow him to collect on a contractual right which has not been conferred on him. We cannot grant such a request.

We have chosen to show what the case is concerned with and thus to dispose of it on its merits. However, both on the grounds that the "coordination" Agreement expressly calls for resort to a Public Law Board in the event of necessary adjudication under it and on the grounds that no conference on the dispute was requested or held at the property, we note that the case is procedurally defective to begin with.

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Award No. 7650
Docket No. 7574-I
2-B&O-C&O-I-'78

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of August, 1978.

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7651
Docket No. 7625
2-WP-CM-'78

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

Parties to Dispute: (System Federation No. 117, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That Carman B. R. Mooney was unjustly discharged from the service of the Western Pacific Railroad Company in violation of the rules of the controlling agreement by letter dated June 30, 1976, as a result of investigation held on June 14, 1976.
2. That accordingly, the Western Pacific Railroad Company be ordered to reinstate Carman B. R. Mooney to service with pay for all time lost, with all rights and fringe benefits unimpaired.

Statement:

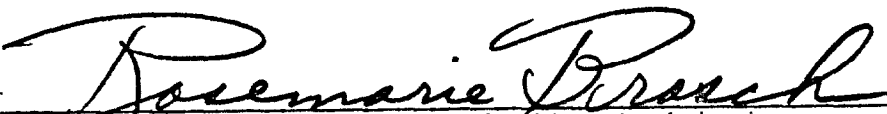
The above question was submitted to the Second Division of the National Railroad Adjustment Board by the above referred to organization in ex parte form, hearing thereon was waived, and the Division is now in receipt of a request from the employees that the case be withdrawn.

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 4th day of August, 1978.