

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

Parties to Dispute: { John W. Kowalczyk
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{ Penn Central Transportation Company

Dispute: Claim of Employees:

1. Violation of Rule 33 and 34 for which I was not given a Hearing, and am now Unemployed for over a Year.
2. Violation of Rule 29 and 84 for which I have over 134, Time Claims totaling around 90,000.
3. Discrimination, Harrasment, and Job Suspension for refusing to do another Crafts Work, in Violation of the Blacksmiths Work Rule 84.
4. Violation of Rule 16 on Bulletin Notices.
5. Violation of Rule 23 Pay and Vacations.
6. Violation of Mr. Moores, 20 Percent System Wide Reduction of Forces of which No Altoona Blacksmiths were Let Go.
7. Violation of the Merger Agreement which States that No Protected Employee can ask for or be given his Severance Pay Unless His JOB is and Has been Abolished. Yet my Helper John Giasullo was Forced to take his Severance Pay by Mr. Higgins when I the Local Chairman was not there, and was told to either Sign or Do Not come in the following Monday as you will not get Payed. The section that States if an Employees Job was Posted as Abolished at one Point and he was Transferred to another Point, and his Job was again Posted as Abolished He would then be sent back to his Last Place of Employment, of which I did report to Mr. Lydon and had him call Mr. Higgins, and was told to go Home.
8. Violation of the Washington Agreement which--Call for 60 Percent of your Pay with Full Retirement and Hospitalization Insurance Credits for 5 Years of which neither My Helper or I were asked as we were the last of the New Haven Blacksmiths, and Helpers and therefore entitled to the Washington Agreement.

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.

This Award is a result of reconsideration by the Board of its Award No. 7732, arising from a dispute between the Claimant, as an individual, and the Carrier. Award No. 7732 was itself a second look at the Claimant's case, originally heard and dismissed by the Board in Award No. 7156, dated October 29, 1976. Award No. 7157 was reconsidered in Award No. 7732 and now again receives reconsideration pursuant to remand of the United States District Court (KOWALCZYK vs WALSH, District Court of Massachusetts, CA 77-3426 T, August 16, 1978, Tauro, J.) wherein the Board was directed, in accordance with the procedures specified in 45 USC 153 (q) to hear the matter and further to specifically determine whether Claimant failed to process his claim in a procedurally correct manner and whether any or all of the claims are barred by the statutory limitations set out in Rule 34-A of the schedule agreement.

At the hearing in the current reconsideration on March 28, 1979, the Board again offered to the Claimant full opportunity to show that any of his claims covered in the present dispute were properly processed on the property under Rule 34-A of the agreement between the parties or, if covered by the Merger Protection Agreement, as required under Section 29 (a) of the Implementing Agreement.

Despite encouragement by various members of the Board and the Referee sitting with the Board, the Claimant failed to add any evidence to the existing record to indicate that his claims were so processed.

The Claimant, however, did offer to provide the Board with his entire record of papers (of a nature unspecified during the hearing). Going beyond its normal rules of procedure, the Board accepted this file for review.

The Claimant's file has been reviewed in detail. It deals with miscellaneous matters connected with the Claimant's employment with the Carrier and considerable correspondence with his Organization and the Carrier dealing with a variety of matters. The file fails to provide any evidence which, on its face, indicates that the claims in question were

processed to "the highest officer of the Carrier designated for that purpose" (Rule 34-A).

Thus, the evidence offered by and received from the Claimant at the Board hearing fail to demonstrate any more than what was shown by the previous record -- namely, that none of the claims is properly before the Board for resolution and, further, were either never initiated under or abandoned during the claim handling procedure on the property.

The file does show, by clear inference, that the Claimant in the past has had some familiarity with the claim processing procedure. Included is at least one claim (not among those presently set forth) which was a disciplinary matter sustained in part through the efforts of representatives of the Organization.

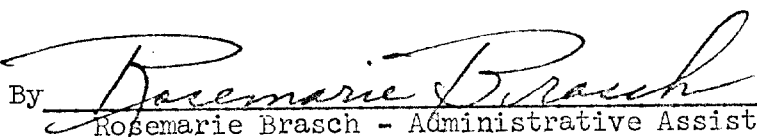
On the basis of the extensive oral hearing granted to the Claimant, an examination of the records which he submitted, and the previously existing record originally considered in Award No. 7196, the Board herewith readopts its findings in Award No. 7732.

A W A R D

The Board further reaffirms its dismissal of claims made by the employe through his letter of October 18, 1974, and his submission to the Board dated November 3, 1975.

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 9th day of May, 1979.