

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

Parties to Dispute: (Kermit D. Alexander
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(Iowa Railroad Company

Dispute: Claim of Employees:

Violation of of Section 105 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004) and/or section 703 and/or 704 of the Regional Railroad Reorganization Act, in that the Iowa Railroad Company violated claimants Right of First Hire under these laws thereby denieing (sic) claimant gameful (sic) employment with this same aforementioned railroad, the facts of which shall be brought forth within this submission.

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 employes 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.

The Claimant was a former Carman with the Chicago, Rock Island, and Pacific Railroad, in service with that Carrier from September 16, 1954 through March 31, 1980 at which time the Rock Island ceased operations.

The Claimant alleges a violation of Section 105 of the Rock Island Railroad Transition Act (45 U.S.C. 1004) and/or Section 703 and/or Section 704 of the Regional Railroad Reorganization Act. The Claimant has met the requirements for the right of first hire and was not hired by the Carrier which operated over the tracks of the former Rock Island Railroad until approximately November 1, 1984 at which point the Carrier filed for bankruptcy in the Federal District Court in Chicago, Illinois. The Claimant argues a Mr. Edward Murray was hired by the Carrier in preference over the Claimant. While Mr. Murray was a former Rock Island employee, he terminated his employment during April of 1979 and was employed by another firm. The Claimant states his name appears on the Central Register of the Railroad Retirement Board and that he

has the right of first hire under Section 105 of the Rock Island Railroad Transition Act, which states that in order to be eligible for this right, an employee must have been gainfully employed with that railroad on August 1, 1979. Finally, the Claimant states that in addition to backpay and other benefits that would be due to him stemming from the Carrier's alleged failure to grant his right of first hire, the Claimant asks that, since the Iowa Railroad is no longer an operating railroad, he be allowed to maintain his right of first hire to protect his employability within the railroad industry.

The Carrier argues as follows: The proceeding is stayed by the Bankruptcy Code and by court order in that the Carrier is under an automatic stay imposed by 11 U.S.C. Par. 362 (1978), the relative language prohibiting:

"the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title. . . ."

The Carrier further argues that the Claimant does not meet all of the criteria set forth by the Rock Island Railroad Transition Act in that he is less qualified than other applicants for the vacancy. In any event, the Carrier states the liability, if any, is limited from the dates of January 30, 1984 (the date that Mr. Murray was hired) to November 2, 1984 (the date of the bankruptcy filing).

Upon complete review of the evidence, the Board finds as follows: Neither Law cited by the Claimant nor the Railroad Retirement Act precludes the language in the Agreement and the Railway Labor Act for the handling of Claims. It is clear that Claims must be handled in the "usual manner on the property." The purpose of a grievance procedure is to create a record that would allow this Board an opportunity to properly review the merits of the case. In this case the Claimant did not follow the proper procedure and, as a result, there is no appropriate record for the Board to review. The Railroad Reorganization Act incorporates the Railway Labor Act, which states in pertinent part (45 U.S.C. Section Three, First (i)):

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle

such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of facts and all supporting data bearing upon the disputes."

It is the Claimant that is bringing this matter; therefore, it is the Claimant's responsibility to follow the proper procedures. The record shows that, among other things, a conference was not held on the property and the Claim was not advanced as required. The Law is exceedingly clear and specific and, because the Claimant did not advance his Claim as required by the statute, the Claim is procedurally defective and the Board has no alternative but to dismiss the Claim without ruling on the merits of the case.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1986.