

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association  
(Southern Pacific Transportation Company)

Dispute: Claim of Employees:

1. That claimant W. L. Powell was improperly recalled from furlough status by the Carrier on February 21, 1984.
2. That claimant was not recalled to service by the Carrier in his rightful seniority order.
3. That due to previous arbitrary and improper change in seniority date of claimant by the Carrier, for which claim is pending at the Board, Claimant's contractual rights under Rule 29 of the current controlling Motive Power and Car Department Agreement has been violated by the Carrier.
4. That the Carrier compensate claimant for all time lost including overtime, beginning 60 days prior to date of this claim March 22, 1984 in addition to interest at the rate of 12% annually.
5. Make claimant whole for all vacation rights.
6. Reimburse claimant and/or his dependents for all medical expenses incurred while claimant was improperly withheld from service.
7. Pay to claimants estate whatever benefits claimant has accrued with regards to life insurance for all time claimant improperly withheld from service.
8. Pay claimant for all contractual holidays lost.
9. Pay claimant for all contractual sick pay.
10. Pay claimant for all jury duty and for all other contractual benefits.

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.

Claimant admits in his count three that the issue of the change in his seniority date, which he claims was wrongfully done, is pending before this Division. Indeed, in Docket No. 10077 the Statement of Claim reads:

"1. That the Carrier arbitrarily changed the seniority date of claimant W. L. Powell from April 25, 1977 to April 1, 1978 on the roster of the Sheet Metal Workers craft at Sacramento, California on October 28, 1981 and moved his position on the roster from number 52 to number 65, in violation of his contractual and constitutional rights.

2. That the Carrier restore claimants proper seniority date of April 25, 1977 on roster of the Sheet Metal Workers Craft at Sacramento, California.

3. That claimant be made whole for wages and benefits lost, if any, due to being improperly furloughed and returned to work promptly as result of the change of seniority date by the Carrier."

As can be seen by the Claim before this Board, the Claimant has refined the Statement of his Claim. However, the entire Claim rests on the same operative facts as those presented in Docket 10077.

At this time this Board is not aware that the panel of Docket 10077 has issued an Award. Thus, we cannot find that the doctrine of res judicata is applicable because no decision on the issue has been made. This action more closely fits the definition of a collateral or indirect attack on a judicial proceeding in an attempt to avoid, defeat or evade it.

A collateral attack should not be sanctioned by this Board. If permitted and the two Boards come up with different Awards on the same operative facts, the arbitral process will be frustrated. Both parties will say that they have prevailed and the solution will be indeterminate. We will not take jurisdiction in such a case.

As stated by Third Division Award 25268:

"The record shows that Part (1) of the claim is pending before Public Law Board No. 2406 for final adjudication. This being the case, it would not be proper for this Board to take any action concerning Part (1), and it will be dismissed."

We will dismiss the Claim for lack of jurisdiction.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1988.