NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Form 1

Award No. 12803
Docket No. 12660
94-2-93-2-35

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of
(Firemen and Oilers
(
(Burlington Northern Railroad Co.

STATEMENT OF CLAIM:

"1. That in violation of the current Agreement, Laborer Elizabeth Riggleman, Havre, Montana, has suffered from harassment and job related stress as a result of incidents that occurred on and after October 31, 1991, involving other Carrier employees.

2. That, accordingly, the Burlington Northern Railroad Company be ordered to compensate Ms. Riggleman $20,000 for lost wages plus lost overtime, $240,000 damages for emotional distress, time credited for lost service months and sick leave, all medical covered, transfer seniority date (8/13/79) to clerk's union in Minneapolis plus cost of any retraining needed, no future harassment or any retaliation toward her or her husband and that the Burlington Northern Railroad Company expands and continues training in all departments on harassment.

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 waived right of appearance at hearing thereon.

On December 26, 1991, a claim was submitted concerning an October 16, 1991 incident.

The Claimant was in attendance at a 6:00 A.M. safety meeting on October 16, 1991. The attendees were to view safety videos and someone made the comment "I'd rather see Debbie Does Dallas." This remark prompted additional comments and, finally, a machinist stated, "How about Betsy Does Paul?" Betsy is the Claimant's nickname.

When the machinist was asked, by the Claimant, if he would like to repeat that comment to a "Mr. Conway", he replied, "No."

The Claimant notified a foreman of the incident and she was told that there would be an investigation. However, it is alleged that the focus of the investigation was not restricted to the safety meeting incident but, instead, focused upon the Claimant's alleged past relationship with "Paul", as well as alleged improper behavior by the Claimant and her husband while on duty.

Moreover, the claim asserted that a complaint filed by the Claimant to the Carrier's Human Resources Department did not produce any positive results, and the working environment for the Claimant and her husband had become "extremely hostile", including warnings of possible retaliation.

The Claim indicated that there have been numerous other harassments during 12 years of employment.

It was alleged in the claim that the Employee had not been able to work since November of 1991 as a result of the job-related stress resulting from the entire incident.

On January 27, 1992, the General Superintendent of Locomotive Operations responded to the claim and conceded that the Claimant had approached her supervisor concerning comments assertedly made during a safety meeting. The Carrier investigated the allegation and determined that the comment that was made "...may have been improper for the workplace..." and, after a hearing, it was determined that the employee making the comment was in violation of Carrier's rules, and he was subsequently suspended for his actions.

The General Superintendent concluded that no evidence was submitted to support the allegations that time lost was due to stress allegedly associated with the work environment, nor was a rule cited that would provide for payment. Compensatory damages are not appropriate.

The denial was appealed and was again denied.

Thereafter, there was considerable correspondence exchanged between the parties, including certain medical documentation.

In its submission to the Board, the Organization argues that denying compensation to the Claimant for all time lost and compensatory damages was in violation of the Agreement, and it generally reiterates the same factual assertions discussed on the property.

The Organization has not cited any specific rules of the Agreement but relies upon the Preamble which advises that the parties pledge to comply with Federal and State laws dealing with non-discrimination toward any employee. The obligation is not to discriminate in employment, including, but not limited to, placement, upgrading, transfer, demotion, rates of pay or other forms of compensation, selection for training, layoffs, and termination.

In its submission, the Carrier concedes the events of October 16, 1991 and advises that the machinist who made the "Betsy Does Paul" statement received a 30-day suspension, but the Carrier denies that there are specific allegations as to the manner in which the Claimant was allegedly harassed at or after the investigation concerning the machinist in question.

In short, the Carrier states that proper discipline was assessed against the Employee involved in the October 16, 1991 incident, and therefore any claim over that incident has been resolved. Beyond that, the Claimant has failed to bring forth any specific factual allegations as to what occurred at the October 31, 1991 hearing, or thereafter, "...which the Grievant now categorizes as harassment. The Organization has not only wholly failed to meet its burden of proof, but has failed to state a claim to which the Carrier can respond." Moreover, the Carrier asserts that no proof has been provided to support the medically related "damages", including claims for emotional distress, medical, lost wages, and sick leave and, of course, the burden lies with the Petitioner.

The Carrier has also relied upon certain EEOC policy guidelines on sexual harassment dealing with "quid pro quo" and "hostile environment" harassments.

Whether or not a claim can be sustained based on an asserted violation of a Preamble of a Rules Agreement, need not be decided in this Award since we dispose of the dispute on other grounds.

Even assuming that a claim may be predicated on a Preamble (and we make no finding in that regard), we find that the allegations of wrongdoing are rather conclusionary in nature and are not specifically developed enough for us to make specific findings of actual asserted harassment, or findings that, if such harassment existed, that the monetary damages sought are directly related to that harassment.

Our conclusions may very well result from the procedures utilized by the parties in this type of a dispute since there was no actual fact-finding hearing available to test the various assertions.

If we were confident of jurisdiction to find a violation of a Preamble, and if we were satisfied that the Claimant had established the basis for her claim, then the fact that a complaint had been filed with the Montana Human Rights Commission would not deter us from issuing an award in favor of the Claimant. However, we are not able to issue such an award here, for the reasons stated above. We emphasize, however, that the Claimant is not without redress if she can establish a basis for her claims. The record affirmatively shows that the Claimant had filed a complaint with the State of Montana. In the final analysis, the procedures available to the Claimant in that forum may be better designed to resolve the Claimant's assertions in an advocacy proceeding.

A W A R D

Claim dismissed.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Ill. this 26th day of January, 1995.