Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

Award No. 12866
Docket No. 12588-I
95-2-92-2-111

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (T. W. Manson, et al
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(Chicago, Missouri & Western Railway

STATEMENT OF CLAIM:

"As stated in Mr. T. R. Wilkens' notice of intent to file ex parte submission, dated August 20, 1992:

1. Carrier flagrantly violated the Agreement, Carrier's implied covenant of good faith and fair dealing, and, The Railway Labor Act on dates of August 1987 to present when it failed and/or refused to permit Carmen to perform Carmen's duties instead transferring Carmen's work to other crafts and people.

2. Carrier shall now allow all carmen on Carmen's Seniority Roster of 1987 sixty (60) days pay as allowable per Rule 34 of the Controlling Agreement at eight (8) hours a day for each day of violations, as applicable, and continual until violation cease.

3. Carrier and its agents did violate The Railway Labor Act, United States Code, Title-45, Chapter 8, Sections 155 and 156.

4. Carrier and its agents (Mr. Batory, Vice-President and General Manager, Mr. J. R. McCarron, Superintendent, Mr. R. King, Mech. Supt., Mr. Sanders, Trainmaster, and Mr. K. Smick, General Mechanical Foreman) be penalized the maximum allowable under The Railway Labor Act, United States Code, Title-45, Chapter 8, Sections 155 and 156 for their responsive partaking in said actions and including any/all other individual(s) responsible for said actions.

5. Carrier and its agents are indicated through attached statement from Mr. Parks, Carman, from verbal statements from others, and attached exhibits, as having practiced discriminatory actions against the Carman Craft and in this instant claim, against all active carmen on attached Carmen's Seniority Roster of 1987 who were carmen during the time period of April 28, 1987 through the present, conceivable to this organization account possible racially motivated reasons.

6. Carrier shall now allow all Carmen listed on said Roster an additional sum of $250,000 punitive damages for violations and discriminatory practices. (In addition to any other sum obtained by any/all Carmen listed received through legal actions against the Carrier and/or its agents.)

7. In addition, Carrier violated Rule 34 (a) when it failed and/or refused to properly respond to instant claim; therefore claim should be allowed as presented."

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 were given due notice of hearing thereon.

As stated in prior Awards of this Board involving this Carrier, the genesis of this dispute resides in the economic conditions associated with the business climate during the time period under consideration. The Carrier commenced operation as a railroad in April 1987 over tracks in Illinois and Missouri purchased from the Illinois Central Gulf Railroad. Projected business did not develop and after operating at a deficit for some time, the Carrier was forced to seek protection under Chapter 11 of the Bankruptcy Code in April 1988. Carrier's efforts to curtail expenses resulted in substantial furloughs for all classes of employees. The reduction in Carmen ranks was particularly contentious at the East St. Louis Yards. This unfortunate situation was further aggravated in April 1989, by the withdrawal of business from that yard by Carrier's largest customer. These conditions prompted a flurry of claims. See, e.g. Second Division Awards 11912, 12375, 12403, 12404, 12405, and 12416. It is from this background that the misunderstandings associated with the present claim arose.

Both parties to the dispute assert as a defense that Rule 34 was violated. Rule 34 deals with the timeliness of filing claims and appeals. It is not necessary to review all the evidence in the record in order to determine the validity of such assertions. As noted above, this Board has previously ruled that in view of the turmoil on the property associated with the bankruptcy, reorganization, furloughs, and attendant disruptions, it is understandable that misunderstandings would arise. Since neither party has clean hands with respect to their positions on the Rule, and the record is vague in some respects, we are not persuaded that either party's position is justified. We note that the parties eventually agreed to certain extensions of time limits for the purpose of filing this claim before this Board. In view of the foregoing we determine that Rule 34 does not serve as a bar to disposition of the claim by this Board. Accordingly, Items 2 and 7 of the Statement of Claim are dismissed.

After an exhaustive review of the voluminous record in this case, we conclude that the Petitioner failed to demonstrate with probative evidence the contention that the Carrier transferred work exclusively reserved to Carmen to other employees. All that we have before us are broad accusations completely unsupported by facts. The Petitioner failed to describe the work allegedly performed by other crafts and failed to demonstrate which other crafts were allegedly performing the disputed work. As best we can determine from the on-property record, Carmen continued to perform Carmen's work at locations where Carmen's jobs remained. The record reveals that Carmen worked at East St. Louis through May 7, 1989. Carmen continued freight car inspection and repair work after the car repair facility at East St. Louis was closed.

The role of this Board is limited to the interpretation of collective bargaining Agreements. As the moving party, the Petitioner has the burden of proving a Rule violation. In this case the Petitioner neglected to describe how the Carrier violated any Agreement Rules. Since the Petitioner's on-property handling of the claim failed to establish a direct persuasive nexus between the disputed action and a specific applicable Rule, this Board has no basis for determining whether a violation occurred.

Those aspects of the claim, insofar as they rely on alleged violations of the Railway Labor Act, are dismissed. The Act clearly and rigidly defines the jurisdiction of this Board. This Board is not empowered to interpret the laws of Congress. It is conceivable there could be a case where an alleged violation of the Act might be so connected with the merits of the case as to warrant its being considered by the Board along with other factors in the case. In and of itself, though, and in the case at hand, such an alleged violation is not subject to the power of this Board, and the remedy therefor, if any, is a matter for consideration by the Federal Courts. (See Second Division Award 6462; Third Division Award 20368; Fourth Division Award 4567.)

The Carrier did not act capriciously or in a discriminatory manner when it reduced forces. It reduced forces only when and to the degree necessary to forestall the shutdown of the railroad, and then in accordance with all applicable Agreement provisions.

The record reveals that Claimant Parks filed a complaint with the Equal Employment Opportunity Commission which he subsequently withdrew after the Carrier filed its response. The record is devoid of any facts to support the allegation of racial discrimination. It is apparent that all Carmen jobs were filled on the basis of seniority. In any case, this is not the proper venue for racial discrimination claims, inasmuch as this Board is only empowered to resolve disputes arising from the interpretation of collective bargaining Agreements. While State and Federal laws contain provisions which protect individuals from racial discrimination, the Petitioner failed to cite to the Board any provision of the Agreement which would be applicable to this aspect of the claim. (See Third Division Award 22318.)

There is absolutely no basis for the $250,000 claim for punitive damages on behalf of any Claimant. The record reveals that many of the 47 Claimants had resigned or retired before the claim period, some had an opportunity to work but did not, and many worked throughout the period.

We conclude that with regard to the "merits" of the claim, the evidence of record clearly indicates that Carmen positions were properly discontinued, as provided by the terms of the collective bargaining Agreement. The Agreement was not violated. Accordingly, demands for compensation are denied.

AWARD

Claim denied.

O R D E R

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

National Railroad Adjustment Board
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.