

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

IVAN M. BECKER

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: I, Ivan M. Becker, claim that the C&NW and the BRC colluded with respect to my unjustified dismissal from service of the C&NW in such a way as to deny me the proper protection of The Agreement between both parties, resulting in the C&NW being allowed to: refuse to return me to service with a clear record; refuse to state exactly the amount of wages that I have lost through dismissal; require that I submit affidavits from all sources of wages during period of dismissal; require that I must successfully pass a medical exam given by the company doctor before any proffered return-to-service proposal would become binding; refuse to clearly define the charges levelled by the C&NW, 'Your conduct unbecoming an employe, being abusive and insubordinate to Agent A. J. Driedric at Sheboygan, Wisconsin Station on the afternoon of August 25, 1958,' which, after being allegedly substantiated because of the testimony given at the company-called hearing of August 28, 1958, resulted in my unjustified dismissal from service of the C&NW; refuse to set aside the lies contained in the testimony of the August 28, 1958, hearing; refuse to correct the written account of the hearing which quoted me as saying to Agent Driedric; 'why must I continually argue over seemingly insignificant matters'; refuse to allow displacement rights in the event that I passed the required medical exam, thereby requiring me to work exactly where the company wanted me to work, seniority rights apparently set aside. I, also, claim that in the BRC's allowance of, and agreement with, the C&NW's September 9, 1959, (Exhibit C) disposition of the case, which allowed me only ½ back pay, if indeed the letter meant to give me any back pay at all because of its ambiguous wording, the BRC intended to receive the balance of my back pay wages, just as Roy C. Place, BRC official, arranged in 1953 relative to a claim that I had against the C&NW at that time, resulting in Merrill Miller, BRC official, receiving 2/3 of the claim originally intended for myself when I refused to abide with Place's directive to me (Exhibit A). Also, the BRC ousted me from its union when I refused to accept the ambiguous arrangement proffered by the C&NW; therefore, the BRC refused to progress my case before the NRAB's 3rd Divn., contrary to an earlier promise to bring this case of unjustified dismissal from service before the NRAB, because I was no longer, it contended, a member of the BRC.

OPINION OF BOARD: Claimant was discharged by the Carrier on September 2, 1958, after formal hearing on the charge of conduct unbecoming an employe, being abusive and insubordinate to Agent Driedric at Sheboygan,

Wisconsin Station. Under date of September 9, 1959, the representatives of the Employees and Carrier agreed to settle the dispute by reinstating Claimant, as follows:

"Reinstate at once with seniority unimpaired provided he can pass the necessary examinations and compensate him for one-half the difference between what he would have earned had he not been dismissed and what he actually earned in other employment, either on or off the railroad. * * * "

Claimant refused to return to service under the circumstances agreed upon and has submitted the dispute to this Board for adjudication.

There are two reasons why the instant claim cannot be sustained by this Board.

First. The agreed-upon settlement of the dispute by Claimant's representative is binding and cannot be set aside by this Board. In **Award 7061 (Carter)** the Board held:

"The adjustment of the claim on the property by Carrier's representative and the General Chairman of the Organization is binding upon the parties. * * * We are obliged to hold that the claim involved in this docket was fully settled on or about August 29, 1949, and there is nothing presently before the Division to be decided. * * * "

Second. The record shows that Claimant's appeal to this Board was not within nine months from the decision of the highest officer designated by the Carrier in accordance with Rule 36, Section 1(c). This Rule provides, here pertinent, that:

" * * * All claims or grievances involved in a decision by the highest officer designated shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board * * * ."

The designated officer's decision was dated April 23, 1959, and proceedings were not instituted before this Division until March 8, 1963. Therefore, the instant claim is barred.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there has been no violation of the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.