

Award No. 14115
Docket No. MS-15336

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

EDWARD ROTTMAN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: The submission shall concern the interpretation of an agreement of December 4, 1963 between the Baltimore and Ohio Railroad and the Brotherhood of Railway and Steamship Clerks, known as "The Locust Point Agreement." More specifically, the question will be whether my client, Edward Rottman, a member of the Brotherhood, is entitled to the separation allowance provided for by the agreement.

OPINION OF BOARD: On June 21, 1963, the Maryland Port Authority leased certain Baltimore and Ohio Railroad Company (Carrier) waterfront facilities at Locust Point, Baltimore, Maryland. Effective January 1, 1964, the Port Authority assumed control of the operation of these facilities as part of an over-all governmental plan. The lease cost the jobs of many of Carrier's employees, one of whom is the Claimant—Edward Rottman, a member of the Brotherhood of Railway and Steamship Clerks.

On December 4, 1963, the Carrier signed an Agreement with the Organization, of which Claimant is a member, containing various clauses providing protection for displaced employees for protection under the Agreement. An Attachment "A" was prepared after the Agreement was signed containing a list of names of those employees eligible for protection under the Agreement. Claimant's name was excluded from the list but he contends that he is eligible for protection under the Agreement.

Only those sections of the December 4, 1963 Agreement as are necessary for a consideration and determination of the matter before the Board will be commented upon.

Section 13 of the Agreement provides, in part, as follows:

"SECTION 13. EFFECTIVE DATE

This Agreement shall be effective January 1, 1964, and the terms and provisions of this Agreement shall be applied to those employees who worked at Locust Point between April 1, 1963 and November 29, 1963 and are listed on Attachment 'A' and any other employees affected by the exercise of seniority rights or the consolidation of positions or work of employees listed on Attachment 'A'."

In Attachment "A", where a list of eligible employees is set forth, we note the following:

"In the event of a dispute as to whether a name should be added to or deleted from this Attachment 'A' a joint payroll check shall be made to determine the facts and Attachment corrected accordingly."

It is contended by the Claimant that Attachment "A" was not a part of the contract, but was nothing more than a schedule which both the Agreement and Attachment admit may be imperfect.

Attachment "A" was specifically mentioned in Section 13 of the Agreement. It was within the contemplation of the parties that such a list would be prepared so that those named on the list in Attachment "A" would be afforded the protection awarded by the Agreement. Attachment "A" is a part of the Agreement, having been made so by reference in Section 13 of the Agreement. It was perfectly fit and proper that one aggrieved, being excluded from the list, should be afforded a remedy as was done by the following language:

"A joint payroll check shall be made to determine the facts and Attachment corrected accordingly."

Furthermore, Section 10 of the Agreement provides for arbitration and the method of arbitration in the event any controversy arose in connection with the allowance of protection afforded by the agreement which arbitration should be final and binding on the parties.

The Record fails to disclose that any effort was ever made by the Claimant to have a joint payroll check made to correct the attachment. This should have been done initially. It appears to the Board that the Claimant has attempted to circumvent the Agreement of December 4, 1963, by appealing to this Board.

This claim should be remanded to the property and processed in accordance with the provisions of the agreement.

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

That this Division of the Adjustment Board does have jurisdiction to the extent indicated in the Opinion.

AWARD

The specific claim of Rottman is remanded to the property to be processed there in accordance with the views expressed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January, 1966.