



Award No. 15591
Docket No. TD-16390

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Pennsylvania Railroad Company (hereinafter referred to as "the Carrier"), violated the agreement between the parties, in particular the terms of an agreement entered into on May 27, 1964, pursuant to Regulations 3-B-1, 3-G-1 and 5-F-1, Parts I and II of the Schedule Agreement effective June 1, 1960, by its action, on and after June 5, 1964, in denying Train Dispatcher C. W. Rook right to exercise his seniority rights to acquire assigned position as Train Dispatcher account alleged physical disqualification.

(b) The Carrier shall now be required to compensate Claimant Rook from June 5, 1964, in accordance with the terms of the agreement of May 27, 1964, referred to in paragraph (a) of this Statement of Claim.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated as a part of this submission as though fully set out herein.

On May 27, 1964, and pursuant to Regulations 3-B-1, 3-G-1 and 5-F-1, Parts I and II, of said Agreement, the parties entered into an agreement for the purposes of reforming the limits of the then existing seniority districts and to provide for certain compensatory benefits to be paid employees within the scope of the Agreement who, as a result of consolidation of Carrier's train dispatching facilities necessarily changed their point of employment.

With respect to the changes in the limits of seniority districts provided for by the May 27, 1964 agreement the only one material to the claim here before the Board was that which included the Carrier's then existing train dispatching facilities at Williamsport, Pennsylvania, in the same seniority district (the Northern Seniority District) as Carrier's train dispatching facilities then and now maintained at Buffalo, New York.

The May 27, 1964 agreement also made provision for reimbursement of time lost as a result of moving the point of employment from one point to

disqualified because of his physical condition, from his position of Train Dispatcher, and whether he is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to June 5, 1964, the Claimant was regularly assigned as a first trick Train Dispatcher at Williamsport. On June 5, 1964, Claimant was examined in the office of the Medical Examiner at Williamsport, Pennsylvania. A form MD-3 was issued by the Medical Examiner on the same date, showing Claimant "not qualified" for the position of Train Dispatcher. The form MD-3 is attached to the Joint Statement of Facts. There are no remarks on this form or any notations to show a change in the Claimant's physical condition. This examination was made only a few days prior to the movement of the Williamsport office to Buffalo and after Claimant had informed Carrier's representative of his intention to bid the first trick position at Buffalo. Claimant subsequently filed a bid for a position at Buffalo, but was not awarded the position to which his seniority would have entitled him.

Carrier contends first that the claim is not properly before this Board and the Board lacks jurisdiction to decide the instant matter. Carrier cites the Employee's failure to invoke Rule 7-E-1 of the agreement. We cannot agree with Carrier's position; the Employees are not barred by their failure to invoke Rule 7-E-1. We feel that this Board has jurisdiction, and will decide the claim upon the issues.

Carrier has failed to show any change in plaintiff's physical condition that would prohibit his performing his duties at either Williamsport or Buffalo. Claimant was entitled to an explanation for his disqualification.

We note that Claimant was granted a disability pension under the Railroad Retirement Act on January 19, 1965. We cannot order the Claimant reinstated. Pursuant to Regulation 7-B-1 of the Agreement we will award loss of wages from August 21, 1964 to January 19, 1965.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained as set out in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.

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