

Award No. 15662
Docket No. MS-15621

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

HALL BOOKER, et al

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: This is to advise you that we intend to file with your Division within thirty days of the date of this notice claims on behalf of Hall Booker, Wilbert Dorsey, Jethro Allen, Bristo Burroughs, Robert L. Byrd, Charles Goodman, Jerry Goodman, Alfred Harris, Leroy Hicks, James Jackson, Sam Leggett, Leon St. Rose, Clarence Scribner, Joseph C. Scott, William P. Stephens, Elijah Stokes, Joseph J. Watson, Boyce C. Workman, Charles A. Johnson, Dewitt Matthews, Campbell Harper, Edward John Julian and John Wesley Goodman.

All of the above named were employees of the Baltimore & Ohio Railroad Company at Locust Point piers and claim is being made for severance pay on behalf of the above named in accordance with and under the provisions of the Memorandum of Agreement between the Baltimore & Ohio Railroad Company and the Brotherhood of Railroad and Steamship Clerks, Freight Handlers, Express and Station Employees; that the above named claimants having been laid off by the Baltimore & Ohio Railroad Company were entitled to severance pay or five year work guarantee in accordance with the aforementioned agreement and that the Baltimore & Ohio Railroad Company has failed and refused to honor said agreement."

OPINION OF BOARD: As the result of a lease agreement entered into on June 21, 1963, between Carrier and the Maryland Port Authority (whereby the Port Authority assumed operation and control of facilities at Locust Point, Maryland), Carrier and the Organization entered into a protective-benefits agreement effective January 1, 1964 providing for certain benefits to those employees who be displaced or furloughed.

The Agreement, known as the Locust Point Agreement, provided that certain employees whose names appeared on a list attached to the Agreement (Attachment A) would be eligible for the protective benefits under the Agreement. Attachment A was prepared jointly by the Carrier and the Organization.

Initially, twenty-three employees, through their attorney, filed their claim against Carrier alleging that Carrier deprived them of their rights to compensation by excluding their names from Attachment A. Subsequently, an additional six employees were added to the list of twenty-three in a subsequent filing.

In essence, Claimants contend that employees junior to them in seniority were accorded benefits under the Locust Point Agreement, and that Claimants should also be entitled to such benefits.

With considerable candor and insight, Claimants' counsel, Mr. Mitchell, submits that the only relief the Board should grant at this time is to remand the dispute and order a "mandatory writ of discovery" requiring Carrier to fully disclose that information which would enable the Parties to determine whether the Claimants had been 'adversely affected' by the exclusion.

Carrier's position may be summarized as follows:

(1) Six of the Claimants¹ or their representative had never submitted any claim on the property, and must therefore be excluded from consideration.

(2) Ten of the Claimants² had never worked at Locust Point during the qualification period of April 1, 1963 to November 29, 1963, as is required by Section 13 of the Locust Point Agreement.

(3) The remaining thirteen men³ did work at Locust Point during the qualification period but were "bumped" by employees senior to them in the Group III seniority category, and they therefore do not come under the provisions of the Agreement.

(4) Five of the Claimants failed to submit their claims within the Sixty Day Time Limit Rule, and their claims are therefore barred.

(5) Full and complete information has been provided to counsel for Claimants, including a payroll check and other pertinent data, and as such Carrier has fully complied with the requirements of the Agreement and Attachment A.

Two primary questions are raised:

FIRST. Did Carrier provide the necessary data and information to counsel for Claimants sufficient to establish the grounds for claim?

SECOND. Have the Claimants satisfied the burden of going forward in the record with probative evidence sufficient to justify their claim?

With respect to the first question, the Board is satisfied that Carrier made available to Claimants' then counsel, Mr. Meyers, all of the necessary data and information which was requested. An examination of the record reveals that Carrier provided Claimants' counsel with a payroll check of Locust

¹E. Johnson, J. A. Alford, S. J. Walker, J. J. Frederick, G. B. Harris, and J. H. Frederick.

²C. M. Goodman, J. W. Goodman, L. Hicks, S. M. Leggett, C. Harper, D. Matthews, R. L. Byrd, C. A. Johnson, J. Goodman, and L. St. Rose.

³W. Dorsey, H. Booker, J. Allen, B. Burroughs, A. Harris, J. Jackson, J. C. Scott, C. Scribener, W. P. Stephens, E. Stokes, J. Watson, B. C. Workman and E. J. Julian.

Point employes with junior Group III seniority between March 1, 1949 and September 9, 1955; a list of employes who worked at Locust Point between April 1, 1963 and November 29, 1963, indicating dates and capacity in which each employe performed service; and a list of the days worked by Claimants at Locust Point between January 1, 1962 and March 31, 1963.

The record further indicates that when asked during a conference on July 21, 1964 whether further information was desired, counsel for Claimants, Mr. Meyers, stated that the information supplied was sufficient to meet his needs.

This data and information, coupled with Claimants' own knowledge of their circumstance, should be adequate for determining when and if any of the Claimants was adversely affected by the Locust Point Agreement. (Compare Award 14115.)

With respect to the second question, we are constrained to hold that Claimants have failed to meet the basic requirements of going forward with a preponderance of evidence sufficient to justify their claim. The record fails to disclose any evidence to show that Claimants were entitled to the benefits of the Locust Point Agreement.

Accordingly, the claims must be dismissed, but without prejudice to Claimants' right to reinstitute their claim.

The Board further finds that Carrier's contention that it was necessary for an employe to have worked at Locust Point during the qualification period before being entitled to the benefits of the Agreement to be without merit. Section 13 of the Locust Point Agreement specifically makes provision for "affected" employes who did not work at Locust Point during the qualification period. Such employes would, of course, have to establish their right as "derivative beneficiaries."

The Board also rejects Carrier's assertion that several of the Claimants were barred from proceeding for failure to file within the Sixty Day Time Limit Rule. We cannot assume that the claims, if any, arose when the Agreement was signed or when the employe received notice that his name was not included on Attachment A of the Agreement.

A claim arises or "comes into being" when an employe has been adversely affected, and the sixty day period commences from that moment and not before. It is, of course, incumbent on the Claimant to establish that his claim was filed within that period.

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

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

AWARD

Claims are dismissed without prejudice.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1967.