



Award No. 15881

Docket No. MS-16757

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

N. D. ABERNATHY

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Having been wrongfully released from position as Clerk to Superintendent at Crewe, Virginia, on August 31, 1964, the Employee claims pay at rate of position from which released for all time lost from August 31, 1964, through the date on which the Board shall or may render an Award in this matter, or in lieu thereof, allowance of lump sum severance pay.

OPINION OF BOARD: The record in the dispute is rather voluminous but certain pertinent facts are clear. Prior to December 1, 1959, Claimant occupied an excepted position of Chief Clerk to the Superintendent of the former Virginian Railway Company at Victoria, Virginia. On the date mentioned, the former Virginian Railway Company was merged with the Norfolk and Western Railway Company, and Claimant accepted an excepted position of Clerk to the Superintendent at Crewe, Virginia, and remained on that position until August 31, 1964. On July 16, 1964, Carrier's Superintendent wrote Claimant in part:

"Since you occupy an excepted position covered by the former Virginian Clerks' Agreement, you will be released from such position after August 31, 1964, account having attained age 65.

You may retire from the service as of August 31, 1964, or exercise seniority as provided for in Rule 2(n) of the current Virginian Clerks' Agreement, subject to the provisions of Rule 4(a) of the same agreement."

The Carrier states that the excepted position of Clerk to the Superintendent at Crewe, occupied by the Claimant, was abolished on August 31, 1964. The record contains no proof to the contrary.

The record also shows that on August 31, 1964, there were numerous rank and file clerical positions at Crewe, which were available to the Claimant on the basis of his seniority. Claimant elected not to exercise his seniority to any of the available clerical positions in accordance with Rule 2(n) of the Agreement, but requested severance pay under the terms of an agreement entered into in connection with the merger of the former Virginian Railway Company and the Norfolk and Western. The request for severance pay was declined by the Carrier on October 7, 1964. So far as severance pay

is concerned, the Board finds that Claimant was not deprived of employment by action of the Carrier, but by choice elected not to exercise his seniority rights. Therefore, the Board finds no proper basis for any claim for severance pay under the agreements involved. The record also shows that Claimant failed to progress his request or claim for severance pay as required by Rule 28 of the applicable Agreement.

There is no restriction in the Agreement upon the right of the Carrier to remove Claimant from the excepted position on August 31, 1964.

As to the Claimant's "rights to compensation from August 31, 1964" the record shows that Claimant initiated such claims with the Carrier's Superintendent for each month commencing with September, 1964, and ending with March, 1966. The claims were declined by the Superintendent and never appealed further on the property as required by Rule 28 of the applicable Agreement.

In summary, the Board finds and holds that there is no proof of violation of any agreement by the Carrier in the handling accorded Claimant, and that Claimant failed to progress the monetary claims as required by the Agreement. The entire claim will, therefore, be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreements were not violated.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

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