

Award No. 18533**Docket No. MSX-18824****NATIONAL RAILROAD ADJUSTMENT BOARD****THIRD DIVISION****Arthur W. Devine, Referee****PARTIES TO DISPUTE:****HENRY J. COOK****REA EXPRESS, INC.**

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission thirty days from date of this notice covering an unadjusted dispute between me and Railway Express Agency, Inc. involving the question.

1. Should the Railway Express Agency, Inc., Milwaukee seniority roster show the seniority of Henry J. Cook, W130 S6645 Somerset Drive, Hales Corners, Wisconsin 53130, with an employee status date of November 24, 1965 instead of November 11, 1966?

OPINION OF BOARD: The record shows that on December 13, 1968, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), the duly authorized representative of Claimant and the Carrier, pursuant to Section 3, Second, of the Railway Labor Act, entered into an Agreement establishing a Special Board of Adjustment. A copy of the Agreement establishing the Special Board of Adjustment has been made a part of the record and provides in part:

"Whereas, the parties agree that the establishment of a Special Board of Adjustment, hereinafter provided for, will accomplish the aforesaid objectives and that the procedures set forth will be the exclusive means by which any disputes between the parties hereto and/or the employees of the Carrier represented by the Organization shall be adjusted during the term of this Agreement, . . ."

The Carrier contends that the claim before the Division should be dismissed for lack of jurisdiction.

In recent Award 18470 involving the same Agreement of December 13, 1968, we held:

"Carrier contends that this Board should dismiss the claim because it lacks jurisdiction to decide this matter. The Railway Labor Act, Section 3, Second, sanctions 'the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. . . .'

Pursuant to this proviso, the parties to the present dispute, mutually agreed on December 13, 1968 to the establishment of a Special Board of Adjustment ' . . . to be the exclusive means by which any disputes between the parties hereto and/or the employees of the Carrier represented by the Organization shall be adjusted. . . . '

The parties, by mutual consent, are without power to remove disputes from the jurisdiction of this Board, when the dispute unquestionably is within our jurisdiction. Such is the dispute in question. However, when the parties, in clear and unambiguous language, express their intent, as they did in the December 13, 1968 Agreement, regarding the procedure to be followed in the settlement of disputes, we should give effect to that intent.

The parties intended that aggrieved employees would utilize the Special Board of Adjustment to remedy alleged violations of the Agreement. Claimant failed to submit his claim to the Special Board of Adjustment; consequently, this Board is without jurisdiction to hear this claim."

The foregoing holding is sound and we adopt it herein. See also Awards 10360, 11751 and 12136. The claim will 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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That this Division of the Adjustment Board is without jurisdiction to adjudicate this dispute in the light of the Agreement of December 13, 1968.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1971.