



Award No. 18643
Docket No. MS-18990

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

MR. FRANCIS A BOYSON

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of your Board, of my intention to file an ex parte submission within 30 days hereafter covering an unadjusted dispute between myself and the Boston and Maine Corporation embodied in the following claim:

Carrier violated the provisions of the agreement, dated August 1, 1950, when on January 9, 1968, I was removed from an assignment at Woburn, Mass. Station and replaced with a junior employe of equal status.

Article LL, paragraph (a) and Article 35, paragraph (b), of the agreement was violated. Also Referee Morse's decision in the arbitration of the 1941 vacation agreement, where the principle of seniority shall be observed when no relief employe is available was violated. As an aftermath the letter of denial was sent 90 days after claim, February 26, 1968 date of claim — May 28, 1968 date of denial, thus Article 22, paragraph (d), violated.

The Assistant Director-Labor Relations and Personnel of the Carrier is being furnished a copy of this notice of intent. There is no Director Labor Relations & Personnel, to my knowledge, on this Carrier at this time.

OPINION OF BOARD: This Claim was progressed on the theory of Claimant that Carrier should be compelled to allow him (Claimant) to move from his regularly assigned position to a vacation vacancy. Claimant cites no authority and produces no evidence to support this conclusion. Therefore, Claim is wholly without merit. It is unfortunate that Claimant saw fit to progress this Claim, which is entirely void of substance. It should never have been filed for consideration before this Board. In order for a dispute to be given serious consideration, it must be justiciable and contain a controversy; this dispute is not justiciable, nor does it contain a controversy. See Awards 16110 (McGovern), 16435 (Ives), and 16919 (McGovern).

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 not violated.

AWARD

Claim dismissed.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1971.