

Award No. 19004
Docket No. MS-19406

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

LEON J. MODROWSKI
ILLINOIS CENTRAL RAILROAD

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 on June 12, 1971 covering an unadjusted dispute between me and the Illinois Central Railroad involving the question:

1. whether the U. S. Congress, House Joint Resolution to Provide for a Temporary Prohibition of Strikes and Lockouts with Respect to the Current Railway Labor-Management Dispute, Pub. L. 91-541, 91st Cong., H. J. R. 1413, Sec. 3 ordering a five (5) percent retroactive increase in rates of pay effective from January 1, 1970 is also applicable to me considering that the aforementioned section **only** allowed for increases in rates of pay made by agreement, and did **NOT** allow for an agreement to neither decrease nor keep stationary the wages of those employees covered under Section one (1) of the aforementioned House Joint Resolution, thus, making Section I (i) of the agreement ratified by C. L. Dennis on February 25, 1971 null and void.

2. that while I remained in the service of the Illinois Central Railroad from January 1, 1970 until August 25, 1970 and although I continued laboring under an antiquated contract which theoretically had expired at 12:01 A.M., January 1, 1970, that when the Brotherhood of Railway and Steamship Clerks reached agreement with the Nation's railroads on February 14, 1971, Section I (i) which forbade payment of retroactive pay to employees who prior to December 11, 1970, voluntarily left the service of the carrier could not be made applicable or valid for me due to the following reasons:

a. during the period between January 1, 1970 until August 5, 1970 I was assured by the Chairman of the Protective Committee for local #774 I would receive financial remuneration.

b. when an agreement was reached on February 14, 1971 Section I (i) was in contradiction to what I was previously told, and that during my eight (8) month period of service in 1970 with the Illinois Central Railroad while I was a member of the Brotherhood of Railway and Steamship Clerks I did by virtue of my union membership give the

union the power to bargain for me. However, after my termination on August 25, 1970, Mr. C. L. Dennis had no authority to negotiate on my behalf, especially something which would be detrimental to me, since I had withdrawn from the Brotherhood of Railway and Steamship Clerks over five (5) months previously. It appears that Mr. C. L. Dennis used me and others in a similar position as some sort of bargaining instrument, considering he would not have to worry about our votes in this year's BRAC's presidential election.

3. that the agreement reached by the Brotherhood of Railway and Steamship Clerks with the Nation's railroads, viz., Section I (i) is totally and without a doubt discrimination in that the sole basis for the receiving of retroactive pay is unjust and unfair to pay someone else, who provided the same services I did, a five (5) percent retroactive wage increase simply because of three (3) months longer tenure. A more just basis perhaps, would be whether or not I was employed during the disputed period. The basis currently being used as set by the aforementioned Section I (i) is totally without precedent. In this one respect the current agreement between management and labor is a violation of my Constitutional rights prohibiting arbitrary discrimination.

4. that one (1) month prior to the agreement reached between the Brotherhood of Railway and Steamship Clerks and the Nation's Railroads on February 14, 1971, the Illinois Central had directed its Accounting Department to apply the provision of Section I (i) of the aforementioned agreement, which on January 13, 1971 was not as yet in actuality. (See enclosure #6.) Thus, even one month before a contract was ratified, the Illinois Central was determined to violate U. S. Congress, House, Joint Resolution to Provide for a Temporary Prohibition of Strikes and Lockouts with Respect to the Current Railway Labor-Management Dispute, Pub. L. 91-541, 91st. Cong., H.J.R. 1413, Sec. 3, as well as to arbitrarily discriminate against employees who had terminated their service prior to December 11, 1971. I find it difficult to believe that the Illinois Central could mystically predetermine the provisions of the final draft of the agreement ratified February 14, 1971 and execute a policy so arbitrarily discriminate.

OPINION OF BOARD: The Claimant alleges that he was improperly denied retroactive pay under the National Mediation Agreement of February 25, 1971.

The record is clear that Claimant voluntarily terminated his services with the Carrier on August 25, 1970, in order to return to school.

Section 1 (i) of Article 1 of the Agreement of February 25, 1971, provides:
(i) Coverage —

All employees who had an employment relationship after December 31, 1969, shall receive the amounts to which they are now entitled under this Section 1 regardless of whether they are now in the employ of the carrier except persons who prior to December 11, 1970 have voluntarily left the service of the carrier other than to retire or who have failed to respond to a call-back to service which they were

obligated to respond under the Rules Agreement. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for. (Emphasis ours).

The Board must apply the agreement as written, and under the clear and unambiguous terms thereof the Claimant was not entitled to the retroactive pay that he claimed.

In view of our decision on the merits of the dispute, it is not necessary to pass on other issues raised by the Carrier.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.