

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

DANIEL J. LAHR

BURLINGTON NORTHERN 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 on July 17, 1971 covering an unadjusted dispute between me the Burlington Northern Railway and the Brotherhood of Railway and Airline Clerks (BRAC) involving the question:

Increase of 5 percent in wages provided in Section 3 of Congressional Joint Resolution retroactive to January 1, 1970.

I resigned from the Burlington Northern June 15, 1970 and did not receive retroactive pay. I feel that the agreement signed by the carriers and BRAC is discriminatory as only those selected by the carriers and BRAC received retroactive pay even though I (and all others that voluntarily left the service of the carriers before the agreement was reached) was governed by all rules and regulations of both the Burlington Northern and BRAC until the day I resigned.

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 June 15, 1970.

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.