

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

CESAR MENDES

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 on covering an unadjusted dispute between me and REA Express involving the question:

Rule 1(b) of our controlling Agreement provides the following:

"Employees occupying positions listed on excepted list No. 1 will neither be required nor permitted to perform regularly routine agency work."

Management in agreement and in concert with the Union (B.R.A.C.) violated and changed this rule and working conditions illegally according to Section 2. Tenth and Seventh and Section 6 of the Railway Labor Act, what is a misdemeanor.

Management and the Union changed the above rule and working conditions in such a way that reverses the rule which now permits only the excepted employees to perform regularly routine work discriminating at the same time amongst the classified employees by making some of them excepted so that others like me can't exercise seniority rights (prime consideration).

Before Rule 1(b) was changed I could bid on the computer operator position because it was bulletined. Not anymore because now those positions are only for excepted employees, and because management changed the working conditions. Neither management nor the Union have the right to change the rules of our Agreement in this manner because Section 2. Seventh of the Railway Labor Act provides the following:

"No Carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act."

I am a victim of a grave injustice.

My question is this: Whether or not are management and the Union (B.R.A.C.) guilty? Of course they are.

The union never fulfilled its duties of representation and protecting my rights.

OPINION OF BOARD: From the entire record in this case, it appears that the Board has before it an issue over which it is without authority to resolve the Railway Labor Act.

The Statement of Claim, quoted above, alleges that Petitioner's Union and his employer made changes in rules and working conditions in violation of Section 6 of the Railway Labor Act. This alleged violation, somehow or other, gives rise to an alleged grievance that Petitioner wants adjudicated under the minor disputes provisions of the Act. A close examination of the record fails to review specifically just what this grievance is or how the agreement governing his wages and working conditions was violated.

Nonetheless, this Board must be governed by the provisions of Section 3. First, (i) of the Railway Labor Act and can only concern itself with "disputes between an employe * * * and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, * * *."

An allegation that an agreement was improperly made, or that Section 6 of the Railway Labor Act was violated, is not a proper claim that can be adjudicated by this Board. See Award 19068 and the awards cited therein.

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 no jurisdiction over the dispute involved herein; and

That the claim be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.