

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21486
'Docket Number MS-21558

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Thomas R. Kerrigan
(Robert W. Blanchette, Richard C. Bond
(and John R. McArthur, Trustees of the
(Property of Penn Central Transportation
(Company, Debtor

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 January 30, 1976, covering an unadjusted dispute between me and the Penn Central Railroad.

I feel that I should be reinstated on the grounds that I was harassed and my rights were abrogated by an offer of a job that I was not qualified to do.

OPINION OF BOARD: The question presented to the Board by the Petitioner was:

"I feel that I should be reinstated on the grounds that I was harassed and my rights were abrogated by an offer of a job that I was not qualified to do."

Section 1(e) of the Merger Protective Agreement provides:

"In the event any dispute or controversy arises between Pennsylvania, Central, or the Merged Company and any labor organization signatory to this Agreement with respect to the interpretation or application of any provisions of this Agreement or of the Washington Job Protection Agreement (except as defined in Section II thereof) or of any implementing agreement entered into between the Merged Company and individual labor organizations which are parties hereto pertaining to the said merger or related transactions, which cannot be settled by said Carriers and the labor organization or organizations involved within thirty days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consideration and determination. * * * The decision of the majority of the arbitration committee shall be final and binding, except that in any case in which there is an unequal number of carrier and organization members on the arbitration committee, the decision of the neutral member shall be final and binding." (Emphasis supplied)

Pursuant to the foregoing provision, the following dispute was submitted to an Arbitration **Committee (Neutral** Francis X. Quinn) on September 23, 1974:

"(1) Did the Carrier violate the provisions of the Merger Protective Agreement dated **May 20, 1964**, and Article VI, Section (d) of the Implementing Agreement of October **18, 1966**, by **requesting** 'utility employees' **T. R. Kerrigan, J. E. Henry** and J. C. Yelencie to accept a position of Messenger/Crew **Caller** at Ashtabula, Ohio **and requiring them to exercise** the election provided for by Article VI (d)?

(2) If the answer to Question 1 is yes, are the Claimants entitled to be restored to utility status at Pittsburgh, Pa. and are they entitled to any loss of compensation subsequent to September 30, **1971?**"

Decision was rendered on October 15, 1974, as follows:

"Opinion

Our review of the record **indicates that** no violation of Article VI (d) of the Implementing Agreement has occurred with respect to the claimants in this case, and no basis exists for the payment of **any** compensation to them alleged to be due. We will **dismiss** the claim **thereby** answering the question at issue **in** the negative.

Award

Claim dismissed."

It is apparent the question at issue here was **submitted** to the Arbitration Board provided **under** Section 1(e) of the Merger **Protective Agreement** and constitutes a final **and** binding decision of the question presented to this Division, therefore the case before this Division will be dismissed. See Awards **17610, 17611**, 17493 and 17589.

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 Employes involved **in this** dispute are respectively Carrier and **Employes** 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 claim be dismissed.

A W A R D

claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1977.