

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21555
Docket Number MS-21603

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Jack Budweiser
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of Mr. Jack Budweiser's intention to file an unparte submission on 30 days from the date of this notice covering an unadjusted dispute between Mr. Budweiser and the Union Pacific Railroad involving whether or not Mr. Budweiser, an employee of the Union Pacific Railroad should:

- (1) receive retroactive pay from July 1, 1965 through March 3, 1973 as a result of being wrongly classified as a General Clerk Steno while actually performing duties equivalent to the Chief Clerk to the Terminal Superintendent where the salary rate for the latter position was, during the aforementioned time, substantially higher than that received by Mr. Budweiser?
- (2) receive retroactive pay from March 4, 1973 through March 4, 1975 as a result of being wrongly classified as an Assistant Chief Clerk to the Terminal Superintendent while actually performing duties equivalent to the Chief Clerk to the Terminal Superintendent where the salary schedule for the latter position was, during the aforementioned time, substantially higher than that received by Mr. Budweiser?
- (3) receive retroactive pay from March 4, 1975 until the resolution of this dispute as a result of abolishment of his job position contrary to the terms of a letter agreement that was executed in his behalf by his bargaining representative and the Union Pacific Railroad?
- (4) Receive retroactive pay from March 4, 1975 until the resolution of this dispute as a result of his job position being abolished contrary to the reduction in force practices and procedures which heretofore were largely based on seniority?
- (5) receive retroactive pay as a result of discriminatory abolition of his job position in favor of employees in his department whose total combined seniority was less than Mr. Budweiser's?

(6) be restored to his position of seniority and leave of absence status as a result of his leave of absence privileges being wrongfully terminated?

(7) receive damages as a result of both mental and physical problems -- including great humiliation and ~~embarrassment~~ -- ~~stemming from~~ his job being abolished contrary to the ~~a. rementioned~~ agreement, his leave of absence privileges being wrongfully terminated, and his continued efforts over the past 10 years to seek an ~~equitable~~ solution to his problem with the Union Pacific Railroad?

(8) receive ~~dmaages~~ as a result of his job position being abolished since Mr. Budweiser relied on the strength of this letter agreement, thereby passing up other opportunities for promotion and job training because of his good faith belief that the letter agreement was a long-overdue action taken to rectify Mr. Budweiser's long-standing inequitable situation ~~with~~ respect to his being wrongly classified as a General Clerk Steno since becoming employed with the railroad in 1965?

OPINION OF BOARD: The record before us evidences that the claim Petitioner is attempting to assert before this Board was not handled on the property in accordance with the provision of the controlling Agreement as required by Section 3, First (i) of the Railway Labor Act and by Circular No. 1 of the National Railroad Adjustment Board. While the Petitioner maintains, in his response to the Carrier's ex parte submission, that the Carrier is estopped from raising this ~~objection, this~~ Board does not agree. Carrier timely and properly raised the foregoing procedural argument and Petitioner's contention that Carrier is estopped from doing so lacks merit.

Accordingly, inasmuch as the Petitioner failed to progress the instant claim in accordance with the prescribed procedure, the claim is barred from consideration by this Board. The claim must therefore be dismissed.

FINDINGS:

The Third Division of the Adjustment Board, after given 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 ~~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

Claim not progressed on the property as required by Section 3, First (i) of the Railway Labor Act.

A W A D _

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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