

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22093
Docket Number MS-22126

Joseph A. Sickles, Referee

(Oren Edwards and
(George Andrew, Jr.

PARTIES TO DISPUTE: (Union Pacific Railroad Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an **ex parte** submission thirty (30) days from the date of this notice covering an **unadjusted** dispute between ourselves and the Union Pacific Railroad Company. The question in dispute:

"wheather [sic] the Union Pacific Railroad Company shoud [sic] suspend the job protection for us under Appendix C-1 and the February 7, 1965 Job Protection Agreement because we did not apply for a Brake/Switchman job as the carrier demanded."

OPINION OF BOARD: The Claimants had been employed as dining car waiters in Carrier's Passenger Service, but, effective April 30, 1971 (pursuant to Section 405 of Public Law 91-518) Carrier's passenger trains were discontinued. The Claimants declined to accept subsequently offered training and employment on comparable positions in another craft and thereafter (on November 20, 1976 for Claimant Andrews and December 15, 1976 for Claimant Edwards), their protective status was withdrawn by the Carrier; which prompted this claim.

At issue in this case is Appendix C-1 of the Rail Passenger Service Act of 1970 (Public Law 91-518); the Mediation Agreement (Case A-7128) dated February 7, 1965 and an Agreement dated November 27, 1973 by and between the Carrier and its Employees represented by the Hotel and Restaurant Employees and Bartenders International Union.

Article I, Section 11 of Appendix C-1 specifically provides procedures for the arbitration of disputes which arise under that Appendix. Further, Article VII of the February 7, 1965 Mediation Agreement specifically provides procedures for the interpretation and application of any of the terms of that Agreement.

This Board decided in Award No. 17988 that:

"...We agree with prior awards of the Board to the effect that procedures established and accepted by the parties themselves for resolving disputes should be respected."

See, also, Awards 20982, 16869 and 14979.

Therefore, on that basis alone, we have no recourse but to dismiss this claim.

However, even if we overcame the procedural defect, we would still be faced with the undisputable fact that the claim as presented to this Board was not handled within the requirements of the time **limit** on claims rule (**Rule 22**); nor was it handled on the property in the usual manner as required by Section 3, First (**i**) of the Railway Labor Act as amended. Thus, on that basis as well, we would be compelled to dismiss the claim.

Even assuming further that these jurisdictional infirmities were not present, we would be compelled to hold *that* (from the evidence in the record) there was no violation of the terms of any of the aforementioned Agreements - especially when they are considered in context with the provisions of the on property implementing Agreement of November 27, 1973, which provides:

"A protected employee who refuses an offer of employment with the Carrier in another craft or **class** or who fails to complete training period, shall forfeit his protected status except when he is removed from training period by the Carrier. "

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 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

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That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of **May 1978.** •