

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22631
Docket Number MS-22393

James F. Searce, Referee

PARTIES TO DISPUTE: (William Rogers
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(The Baltimore and Ohio
(Railroad Company

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 the 14th day of December, 1977, covering an unadjusted dispute between me and the B & O Railroad, involving the question:

- 1) of being illegally dismissed from my job of 'B' operator of spike puller.

'I was told to operate an unsafe spike puller and I refused to do it.'

'I told the supervisor that I would operate the puller that I had been operating and he told me I was fired.'

OPINION OF BOARD: As the result of a hearing which was held on November 17, 1975 in connection with the charge:

"You are charged with your responsibility in connection with refusal to operate roadway track machine at Anderson, Ohio at about 8:25 A.M., October 27, 1975."

Claimant Rogers was dismissed from Carrier's service by letter dated November 25, 1975.

No appeal was taken by Mr. Rogers from this dismissal. No claim of any type was initiated by Mr. Rogers with any Carrier official. Nothing was heard from Mr. Rogers until November 16, 1977, when a "Notice of Intent" was filed with the Executive Secretary of the Third Division of this Board.

In petitioner's ex parte submission to this Board we find the following:

"WHEREFORE, petitioner pray judgment against respondent in their favor;

"(a) requiring that respondent establish non-discriminatory hiring, payment, opportunity, promotional, lay-off and recall, employment roles, and benefit plans and programs; and

"(b) enjoining the continuance by respondent of the illegal acts and practices alleged herein."

The jurisdiction of this Board is derived from Section 3, First of the Railway Labor Act, as amended, which provides in sub-section (1) thereof that:

"The disputes between an employe or group of employes and a Carrier or Carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Underscoring added)

In this instance, petitioner neither initiated his appeal in a timely fashion nor did he progress his dispute "* * * in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes; * * *". Therefore, this claim is barred from consideration by this Board.

Even if we were able to somehow overcome this fatal procedural situation, we could not, under any circumstances, entertain a request such as is made against the Carrier in this case. As indicated above, this Board resolves disputes growing out of the interpretation or application of negotiated agreements concerning rates of pay, rules or working conditions. Allegations relative to alleged discriminatory plans and programs are not proper matters for review and/or consideration by this Board.

While this Division would be completely justified in dismissing this case for either or both of the jurisdictional reasons outlined, we have, nonetheless, looked beyond these fatal defects and still find ourselves faced with the dismissible situation in which Claimant Rogers admittedly refused to comply with the instructions of his supervisor, and has offered this Board no valid justification for such refusal other than his own statement that:

"* * * I understand that I refused only because he cursed me and pointed a finger at me, which he is a man and I'm a man too, and he had no reason to point his finger in my face."

There is no substantiation in this record to support the allegation that the supervisor "cursed" claimant. There is no substantiation in this record to support the contention that the equipment in question was unsafe. There is, in this record, evidence to show that Claimant Rogers had previously been disciplined for failure to comply with the instructions of his foreman.

We have no alternative, based on the record in this case, other than to deny the claim as presented to the Board.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1979.