

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23337**  
Docket Number MS-23915

PARTIES TO DISPUTE: (Walter E. Corran  
(  
( Cambria and Indiana Railroad Company

STATEMENT OF CLAIM: "Description of Dispute: **Walter** E. Corran, Trainmaster (Dispatcher) claims personal discrimination in not ~~being offered opportunity~~ to move from 2nd shift position to daylight ~~posi-~~ **tio** that became available ~~through~~ retirement of daylight **trainmaster** (Dispatcher). Walter E. Corran having 30 years service with the company and having been promoted to Extra Dispatcher on 6/1/57 and regular dispatcher 3rd shift 10/1/65 and again to 2nd shift dispatcher on or about 10/23/73 ~~and during~~ any and ~~all~~ temporary ~~vacancies~~ of 1st shift **dispatcher** due to illness, vacation, etc. moving up and ~~fullfilling~~ all duties of-1st shift dispatcher, etc."

OPINION OF BOARD: The facts **in** this case show that claimant occupied an official, non-agreement, supervisory position of **Train-** master (Dispatcher) on the Cambria and Indiana **Railroad** Company, a wholly owned subsidiary of the Bethlehem Steel Corporation. In November, 1980, to replace a retiring Trainmaster, Carrier brought in a supervisory **employee** from another "**Steel**" railroad rather than reassigning claimant to the retiring **Trainmaster's** position. The dispute outlined in the Statement of Claim above **resulted** from this action. Subsequent to Claimant's notice of intent to this Board (1-19-81), he voluntarily retired from the service of the Carrier effective January 31, 1981.

The jurisdiction of this Board comes from Section 3, First (1) of the Railway Labor Act, as amended. **That Section** refers to "**disputes** between **an** employee or group of employees and **a** carrier or carriers etc."

**It** is generally recognized that non-agreement **Trainmasters** are excluded from the definition of employee in Section 1, Fifth ~~of~~ the Railway Labor Act, as amended, and **in** the orders of the Interstate Commerce Commission (Ex Parte 72) as **well** as in the Craft and **Class** Determinations of the National Mediation Board.

Therefore, the dispute as described above is barred from **consider-** **ation** by this Board and is accordingly **dismissed**.

**FINDINGS:** The Third **Division** of the Adjustment Board, upon the whole record and all the evidence, find8 and holds:

That hearing **as** requested was held and concluded;

**That** the Carrier involved in this dispute is a Carrier within the meaning of the **Railway** Labor Act, as approved June 21, **1934**, but the **Employee** is not an **Employee** within the **meaning** of that Act;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred.

**A W A R D**

Claim dismissed.

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

ATTEST:

*A. W. Parker*  
Executive Secretary

Dated at Chicago, Illinois, this **19th day of June 1981**.

