

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23850
Docket Number MS-23900

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Walter Flowers
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(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Whether the **undersigned** employee is entitled to the benefits as provided by Appendix C-2 To The Rational Railroad Passenger Corporation Agreement with its employees **et.al**, dated July 5,1973 as a result of the actions of the said **Employer**."

OPINION OF BOARD: On at least three occasions in 1980, **claimant** applied for benefits be asserted were due him under Article I of Appendix C-2 of the July 5,1973 **Agreement** between the Carrier and its **em- ployes**. The Carrier denied each of **claimant's applications** and **claimant** properly appealed his **claim** on the property. **Claimant** now **brings** his claim to this Board contending he was a displaced **employee within** the meaning of Article 1(b). The Carrier specifically denies that claimant is entitled to, any C-2 benefits because he did not suffer any loss of either **compensation** or other **employment** conditions as the result of the discontinuance of **inter- city rail passenger service**. In addition, the **Carrier** argues that Article **IX** of Appendix C-2 expressly provides that any dispute over C-2 **benefit en- titlements** must be submitted to a Public **Law Board** and, thus, this **Board** lacks jurisdiction to resolve the claim on its merits.

Article IX(a) of Appendix C-2 states:

"(a) **In the event any dispute or controversy arises between the parties hereto with respect to the inter- pretation or application of any provision of this Ap- pendix, except Articles III and X, which cannot be settled within thirty (30) days after the dispute arises, such dispute may be referred by either party to the dispute to a Public Law Board for consideration and determination.**" (Emphasis added.)

The parties, through negotiations, have expressly agreed that a Public **Law Board** should be the exclusive forum for **adjudicating** disputes arising **under** Appendix C-2 (except for disputes arising **under** Articles III and X). **We must accept and** respect the parties' negotiated dispute resolution procedure. **Third Division Award No. 22093 (Sickles)**. Though Article IX **uses** the **permissive** term "may" when it refers to a Public **Law Board**, the use of such a **term** does **not** give the parties a chance to select **alternative** forms for **resolving Appendix C-2** disputes covered by Article IX since no alternatives are expressly stated. **Third Division Award No. 21706 (Lieberman)**.

Claimant's **complaint** is clearly based on Article I of Appendix C-2. Since Article IX therein expressly provides a form for **resolving** controversies arising out of Article I of Appendix C-2, **this Board** lacks jurisdiction to consider this claim.

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** does not have jurisdiction over the **dispute involved** herein.

That the claim **is** barred.

A W A R D

Claim dismissed.

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

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.

