

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24230
Docket Number MS-24002

• Robert E. Peterson, Referee

PARTIES TO DISPUTE: { (Matthew Bowen
{ Duluth, Winnipeg and Pacific Railway Company

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of Matthew Bowen's intention to file an ex parte submission on March 19, 1981 covering an unadjusted dispute between Matthew Bowen and the Duluth, Winnipeg & Pacific Railway Company involving the question:

1. In 1979, the claimant-grievant was employed on the Duluth, Winnipeg & Pacific Railroad as an extra gang member and had service on the extra gang for the months of May through July, 1979. In July of 1979, the claimant-grievant was laid off the line for lack of work. Thereafter, in 1980, the claimant-grievant contacted the roadmaster and other employment offices at the Duluth, Winnipeg & Pacific Railway Company requesting employment for the extra gang for the 1980 production season. He was denied at every level such employment and was specifically advised there was no work available for him by each office that he contacted.

2. The claimant-grievant has since learned that there have been a number of employees hired to the extra gang crew for the Duluth, Winnipeg & Pacific Railway Company who had not worked in the year 1979 on said extra gang and who would have less seniority rights to such employment than the claimant-grievant.

3. Under Rule 21(e) of the Agreement, it is hereby alleged that the employment of these less senior employees, while the claimant-grievant is not so employed, constitutes a continuing violation of this agreement.

4. The claimant-grievant hereby demands the following:

a) All back wages which he would have earned, had he been fully employed on the extra gang crew from the commencement of the production season.

b) Immediate reinstatement of employment to the extra gang.

c) Any other form of just and equitable relief to which the claimant is entitled under the Agreement.

On September 18, 1980, the claimant, Matthew Bowen, filed the attached Appeal and received no response whatever from M. H. Higginbotham, General Manager. Under Rule 21(c), the failure to respond to the Appeal by the Duluth, Winnipeg & Pacific Railway Company deems the allegations in the Appeal to be admitted, but the Duluth, Winnipeg & Pacific Railway Company has not paid the benefits to the claimant."

OPINION OF BOARD: This dispute concerns several arguments and counterarguments relative to the proper application of various Agreement provisions involving the right of the Petitioner to progress a claim as well as the jurisdiction of this Board to assume jurisdiction on the basis of the on-the-property handling given to the claim.

Basically, Petitioner had worked for the Carrier in May, June, and July 1979 as an extra gang member in its Maintenance of Way Department. It is his contention that he was laid off from work as of July 6, 1979. The Carrier contends he voluntarily terminated his services when work was available, and that there were no lay offs from the extra gang in July, 1979. In another argument Petitioner maintains his seniority was permanent and he was thereby entitled to extra gang work for the "1980 production season" ahead of newly hired, junior employees. Conversely, Carrier urges Petitioner was a probationary employee in and was not qualified by seniority or his past work record for work in 1980. Carrier further submits that when the annual seniority listing was posted on January 1, 1980, Petitioner's name was not included on such listing and that in keeping with the applicable Agreement rule it was incumbent upon Petitioner, if he believed he should have been listed, to have filed a roster protest for correction within six months. This, it maintains, Petitioner did not do. Petitioner asserts this latter Carrier argument is irrelevant to the principal issue in dispute, his claim, which he contends should be allowed account an alleged violation of the time limit on claims provisions of the applicable Agreement.

The Board finds it need not pass judgment on all of the above issues as it is apparent from the record as presented that although Petitioner filed and progressed his claim of July 14, 1979 both with and without the assistance of a representative of the Organization, as required by the collective bargaining Agreement, he apparently abandoned such proper prosecution as concerns the handling of a claim with the highest designated appeals officer on the property. Here, the record fails to show Petitioner had provided a written rejection or declination of the preceding appeals officer and neither he nor a representative formally progressed the claim to the highest appeals officer. Petitioner's contention that a letter dated September 18, 1980 from his attorney to the highest appeals officer is not found to satisfy the requirements of the on-the-property handling of claims under the terms and conditions of the applicable Agreement.

The circumstances of record clearly showing the claim Petitioner is attempting to assert before this Board was not handled on the property in accordance with the provisions of the applicable collective bargaining Agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board, this Division has no alternative but to hold that the claim is barred from our consideration.

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 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 : Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.