

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24618
Docket Number MS-24419

Herbert L. Marx, Jr., Referee

(Patrick J. McWilliams

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

(

(American Train Dispatchers Association

STATEMENT OF CLAIM:

"1. Whether Mr. **McWilliams'** membership in the Union was terminated in violation of the collective bargaining agreement and contract between Consolidated Rail Corporation and the American Train Dispatchers Association.

2. Whether the termination of **Mr. McWilliams'** seniority can be done unilaterally by the American Train Dispatchers Association.'

OPINION OF BOARD: The Petitioner, **P. J. McWilliams**, is a former Train Dispatcher who, in 1978, was promoted to a managerial non-union position. Under specified conditions, he was permitted to retain his Train Dispatcher seniority. This involved payment of dues to the Organization, the American Train Dispatchers Association.

This right is covered under Rule **3(c)** of the Agreement **between** the Organization and the Carrier. Such rule states as follows:

"**(c)** A train dispatcher promoted to a non-agreement position after March 31, 1976, will continue to retain and accumulate seniority, provided such employee remains a member in good standing with The American Train Dispatchers Association in accordance with the Union Shop Agreement, notwithstanding the provisions of Section 2 thereof."

In 1980 a question arose as to whether the Petitioner was meeting his obligations of dues payments in order to maintain membership in good standing in the **Organization**. Upon notification by the Organization of the Petitioner's alleged failure to maintain such good standing, the Carrier advised the Petitioner of his potential loss of seniority. The Petitioner was advised, however, of his rights under the Union Shop Agreement to appeal such action. The Petitioner appealed, was granted a hearing, and was not successful in his appeal.

To adjudicate such disputes, the Union Shop Agreement includes in Section 5(c) a provision for arbitration by a neutral arbitrator whose decision "shall be final and binding upon the parties". Petitioner sought and obtained such arbitration. In an award dated June 26, 1981, Arbitrator John L. Schroeder made the following Award:

"The ATDA and Conrail have followed the proper procedure in accordance with the Union Shop Agreement with respect to P. J. McWilliams and there are no mitigating circumstances to relieve Mr. McWilliams of the penalty applied."

Petitioner now seeks review of this matter by the Board. A full submission and response to Organization and Carrier submissions was made on behalf of the Petitioner. No request was made for appearance in person before the Third Division.

The Board finds ~~that~~ there is no basis for its review of the merits of this matter. The Petitioner seeks to resolve a dispute between himself and the Organization on a number of grounds. The Board is without jurisdiction under the Railway Labor Act to resolve such disputes. Section 3, First (i) speaks **only** to disputes between "an employee or group of employees and a carrier or carriers" -- not between an **employe** and an organization.

Even if there were not such bar to the Board's consideration of the matter, it is clear that the parties have provided another means for resolution of disputes such as this -- the arbitration procedure noted above. The Board may not intervene as an alternative means of resolution or as an appellate body reviewing the "final and binding" arbitration award.

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

That the parties waived oral hearing;

That the Carrier and the **Employees** 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.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devol - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.