NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25081

THIRD DIVISION

Docket Number MS-24821

George V. Boyle, Referee

PARTIES TO DISPUTE: (J. W. Warren
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(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "I am appealing P. L. Foster's decision, copies of which are attached for your information, not to handle my claim for compensation that I was denied from 1967 to 1981 due to the merger between Seaboard and Atlantic Coast Line Railroad. It is my intention to file an ex parte petition for review of my case within 30 days as required by the board.

To give you a little background information--Seaboard hired me in 1966. In 1967, when Seaboard and Atlantic Coast Line merged, I was qualified and on the job in Hopewell, Virginia. In 1968, I was transferred to Raleigh, N. C. Before the merger my pay was $25.85 a day for five days. After the merger, I was paid only $21.00 a day for five days. When this happened, I was unaware of the Orange Book "Protection of Employees In Event of Merger." The Orange Book "Protection" means that my pay should have been maintained at the pre-merger rate.

In 1977, when I was notified by circular that my job was abolished, I was still unaware of this Orange Book, but I did try to find out about my rights as an employee for eleven years. I had extensive talks with Superintendent E. S. Wilkes concerning my job. When I was unsuccessful in obtaining a job, I contacted the Personnel Department in Jacksonville, who notified Mr. Wilkes that I was a protected employee and would have to be trained as an operator because my job as swing job had been abolished.

I was given a new job but I was still unaware that I was entitled to the pre-merger amount of compensation because I did not know about the Orange Book nor did I have the pay record.

When I finally found out about the Orange Book protection for all employees who were "present employees" at the time of the merger, I learned that these employees were not to be "deprived of employment or placed in a worse position with respect to compensation, rules, working conditions, fringe benefits or rights and privileges at any time during employment." I realized I had been deprived of compensation so I requested a merger guarantee to assure me that I would be paid the proper amount and that I would not lose my job again.

On December 1, 1980, I was advised that my monthly merger guarantee was retroactive as of July 1, 1980. Superintendent Wilkes stated the amount of the guarantee was $1,609.42. I knew this amount was incorrect when I multiplied $25.85 by the number of days that I worked in a month. I tried to invoke the aid of my local chairmen, Mr. C. C. Morrison and Mr. Freddie Walker. When they failed to help me, I contacted Mr. T. R. Roebuck, VGCBRAC. After he checked my service records and discovered that I was a protected employee at the time of the merger, he notified Mr. H. C. Sibert, Director-Disbursements in Accounting.

Finally, on March 31, 1981, I received a letter from Mr. Wilkes advising me that my monthly merger guarantee was corrected. The new amount of $1,786.26 was made retroactive only to January 1, 1981.

I expected the guarantee to be made retroactive to 1967. I again invoked the aid of the Union. This time I contacted Mr. L. Earl Bosher. Mr. Bosher filed a claim for the difference between the corrected guarantee and compensation received prior to May 1, 1981. He denied further handling of my claim because he believed the doctrine of Laches will apply to my claim. In the seventeen years that I worked, this Orange Book was never brought to my attention and was never made public. When I finally found out about it, I had to do a lot of searching to attain it. No one wanted me to have it.

I faithfully paid my Union dues for seventeen years. My service record shows that I walked the tracks in the heat, rain and cold. I have been hindered from being promoted because guarantees are the governing reasons that the company considers for promotion.

It is requested that this letter be used as notice of my appeal of the decision of P. L. Foster."

OPINION OF BOARD: The Petitioner, J. W. Warren, hereby states that he was hired by Seaboard Coast Line Railroad Company in June, 1966. In 1967, when Seaboard Coast Line merged with Atlantic Coast Line Railroad, the Petitioner was employed with Seaboard Coast Line Railroad. The Petitioner's employment on a swing job was abolished in 1977, but Petitioner was protected by a guarantee that he must be trained for another job within the Railroad. Prior to the merger between Seaboard and Atlantic Coast Line Railroad, Petitioner's rate of pay was $25.85 per day and after the merger, it was reduced to $21.00 per day. The Petitioner's reduction in pay was a direct violation of his rights under Section Two, Paragraph B of the Orange Book Agreement "Protection of Employees in Event of Merger", which states:

> "... none of the present employees of either of the said carriers shall be deprived of employment or placed in a worse position with respect to compensation, rules, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment."

The Petitioner is hereby making claim for the difference in compensation paid by the reduction in his salary from the date of the merger of Seaboard and Atlantic Coast Line Railroad as provided in the "Protection of Employees in Event of Merger".

The Claimant filed a petition on April 29, 1981 for monies due him under a monthly merger guarantee which had been negotiated and in effect since the merger of the Seaboard Coast Line and the Atlantic Coast Line Railroad in 1967. He alleges that he was unaware of his rights under the "Protection of Employees in Event of Merger" agreement, called the Orange Book and never knew of its existence until 1974.

He had been advised earlier on December 1, 1980, that his guarantee had been made retroactive as of July 1, 1980 and a subsequent adjustment corrected his guarantee retroactive to January 1, 1981. Thus he had certainly been made aware that his position and pay were under adjustment in accordance with the Orange Book at least as far back as December 1, 1980.

Regardless, it strains the bounds of credulity that any employe would work for eight (8) years for the Carrier and be unaware that an agreement had been negotiated between his representatives and the Carrier which provided for his protection.

Moreover the "Doctrine of Laches" which the Carrier asserts in defense is by all rights appropriate. The Claimant certainly cannot claim that fourteen years is not an "unreasonable delay" to institute a claim, nor that such claim is not "prejudicial" to the Carrier.

But, without respect to the foregoing, the Claimant never handled this matter on the property, never conferred with Carrier representatives there nor appealed their actions at any level below this Board. There are numerous awards to the effect that the Board may not consider matters brought to them without following the agreed upon prior procedures. Third Division Awards cited include 17362, 17511 17534, 17563, 17624, 17967, 18081, 18133, 18337-18341, 18433, 18350, 22598, 21373 and 23023. Therefore this claim is not properly to be considered by this Board and in accordance with the provisions of the Railway Labor Act must be dismissed.

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 Employes involved in this dispute are respectively Carrier and Employes 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.