

CH
300
SM
MS
/

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25615
Docket Number MS-25750

Hyman Cohen, Referee

(Wesley J. Trahan

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company
Eastern Lines

STATEMENT OF CLAIM:

"It is the position of your petitioner that he has meet (sic) the requirements of being a protected employee according the current Agreement, Article II, Section 2 of the 'TOPS' Agreement, by acquiring two years or more **employee** relationship with the Carrier in question and had completed twelve (12) months' continuous on assigned positions covered by the Agreement when he could no longer hold an assignment on May 19, 1982, considering his employment date of August 2, 1980.

Carrier in question violated and continues to violate the current Clerks' Agreement, including, but not limited to Article II, Section 2 of the *TOPS' Agreement, when commencing the first day following the completion of two years' relationship, it failed and refuses to recognize your petitioner as a protected employee and pay him his protected compensation for which he is entitled while unable to retain or obtain a regular position covered by the Agreement."

OPINION OF BOARD: The Claimant was hired and placed on a Guaranteed Extra Board of the Carrier on August 2, 1980. He retained this classification for twenty-one (21) months before he was furloughed on May 19, 1982. Approximately three (3) months after he was furloughed, a claim was filed for protected rate of pay beginning on August 2, 1982. The claim was appealed by the Organization to the highest officer designated to handle claims and grievances. In that appeal, the Organization contended that the Claimant met the requirements of Article II, Section 2 of the TOPS Agreement as of August 2, 1982 and the Carrier argued that he failed to satisfy such requirements. The issue was not resolved and the claim was listed by the parties to be submitted to a Public Law Board for decision. By letter dated June 13, 1984, the Claimant notified the Third Division of his intention to file an **Ex Parte** Submission covering an 'unadjusted dispute' between himself, the Organization and the Carrier. The Claimant included with his letter a copy of a notice dated May 18, 1984 from the Organization to the effect that 'this claim lacks merit as well as Agreement support and cannot be handled to a successful conclusion, nor further by this System Board.'" The Organization then sent a request to the Carrier that the case before the Public Law Board be withdrawn from handling.

Article II, Section 2 of the TOPS Agreement provides that employees who have

"*** or acquire two years or more of employe relationship, shall become protected employees upon completion subsequent to the effective date of this agreement of 12 months continuous assignment on positions covered by this agreement."

The record indicates that the Claimant was furloughed on May 19, 1982, which was prior to acquiring "two years or more of **employe** relationship. as required under Article II, Section 2 of the TOPS Agreement.

Furthermore, Article II, Section 6(d) of the TOPS Agreement provides that an **employe** must either be regularly assigned to a permanent position or assigned to a Guaranteed Extra Board on the date such an employee acquires protected status under Article II, Section 2 in order to qualify for protected pay. Since the Claimant did not satisfy the threshold requirement of acquiring 'two years or more of employe relationship" under **Article II**, Section 2, the terms of Section 6(d) of the TOPS Agreement are not applicable.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Pever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.

