

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the February 7, 1965 Agreement when it removed the protected status from Mr. R. D. Ojala, a machine operator and trackman (System File NMA 020765/800-22-64).

(2) Claimant R. D. Ojala's protected status shall be reinstated and he shall be paid all compensation due him beginning January 12, 1984 and continuing until the Carrier complies with the provisions of the February 7, 1965 Agreement."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In this dispute, Claimant has asserted protective rights under the Job Stabilization Agreement of February 7, 1965. He had performed compensated service for Carrier in 1962, 1963 and 1964 and fulfilled the basic requirements for coverage under the aforementioned Agreement. On November 14, 1977, Claimant began working as a Section Foreman and continued in this position until he left it on October 1, 1981. He then obtained a position as a Group III Machine Operator which, in effect, was a seasonal position, and remained until the early part of 1984. According to the Organization, Claimant was unable to hold his position, and in accordance with his status as a covered employee, the General Chairman applied for protective benefits on his behalf on March 9, 1984. This request was denied by Carrier on the grounds that his resignation from the Section Foreman's position on October 1, 1984, removed him from the protective coverage of the February 7, 1965 Agreement.

In defense of the Claim, the Organization argued that Claimant had not forfeited his protective status, since he obtained a position as a Group III Machine Operator and thus continuity was maintained under the protective Agreement. In essence, his resignation did not by extension invalidate his protective status.

Carrier contended that when Claimant left a permanent position to accept a seasonal (intermittent work) position, he forfeited his rights under Section 1 of Article II of the February 7, 1965 Agreement. It noted that he could have obtained another Foreman's position in October, 1981, and consequently, any subsequent deprivation of employment he experienced stemmed solely from his voluntary actions. In considering this case, the Board takes judicial notice of Article VII of the February 7, 1965 Agreement. This portion of the protective Agreement provides a well defined dispute settlement mechanism, which was specifically designed by the contracting parties to handle questions of interpretation or application arising under the Agreement. As such, and consistent with our past decisional holdings, we must disclaim jurisdictional authority to adjudicate this dispute, since the parties purposely and explicitly provided a process and organizational structure to resolve disputed positions. (See Third Division Awards 18925, 17988, 19829, 19372, 26006, et al). It would ill-behoove the Board to usurp this authority when the parties provided their specialized tribunal to hear and decide disputed interpretative questions. For these reasons, we will dismiss the claim without prejudice.

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 17th day of May 1988.