

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(James A. Allen
(James E. Simmons

PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM:

"Whether we, as management employees and members of the Brotherhood of Maintenance of Way Employees Union were treated discriminatorily due to the fact that we belonged to the Brotherhood of Maintenance of Way Employees Union when the Illinois Central Gulf Railroad closed its Mobile, Alabama office and offered us \$15,000 in severance pay, while clerical workers belonging to the BRACT Union, were paid \$36,000 in severance pay and those employees in management but not in our union were paid \$25,000 in severance (sic) pay."

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 were given due notice of hearing thereon.

Effective with the close of business on April 4, 1986, Claimants were officially notified that their management positions as Building Engineers were abolished. They contend that as management employees, they were treated in a discriminatory fashion when Carrier closed its Mobile, Alabama, General Accounting and C&CS offices and offered them \$15,000 in severance pay, while offering BRAC clerical workers \$36,000 and other non-union management employees \$25,000.

A complete review of the record shows that the Board lacks jurisdiction to decide this Claim because the Claimants are not "employees" within the meaning of Section 151, Fifth, of the Railway Labor Act. (See Fourth Division Awards 4668, 4667, 4276, and 14.)

Second, the Board does not have jurisdiction under the Railway Labor Act to entertain claims by employees not covered by a collective bargaining agreement. As provided in Section 153, First (i), of the Railway Labor Act, the Board is concerned only, as to individuals, with "disputes between an employee...and a Carrier...growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions...." In this instance, Claimants worked as non-union employees without any contract applicable to their employment as Building Engineers. Therefore, the Board has no contractual basis upon which to rule. (See First Division Award 21870, and Fourth Division Awards 4548, 4513, 4507, 4410, 4205, 3248, and 2511.)

Furthermore, the record before the Board is clear that the Claim was not handled on the property in accordance with the requirements of Section 152, Second, and 153, First (i), of the Railway Labor Act as required by Circular No. 1 of this Board before Claimants belatedly filed their April 27, 1987 Notice of Intent with the Board.

Suffice to say that under Section 152, Second, it is mandatory that all disputes must be considered, and, if possible, decided, with all expedition, in conference between the parties on the property. Such a conference is a prerequisite to any case being referred to this Board. The record of this case indicates that no conference relative to this Claim was held on the property prior to its submission to this Board. (See First Division Award 23826; Second Division Awards 11586, 11416, 7155; Third Division Award 27482; Fourth Division Award 4664.)

As for Claimants' contention they were treated in a discriminatory fashion, see Second Division Award 11285.

The Carrier raises additional procedural and substantive defenses to the Claim that this Board need not reach in view of our finding that the Board is without jurisdiction to hear the dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1989.