

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Victor R. Polewsky  
PARTIES TO DISPUTE: (  
(Bay Colony Railroad Corporation

STATEMENT OF CLAIM:

"This is to serve notice as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission covering an unadjusted dispute between me and the Bay Colony Railroad Corporation involving the question previously under docket MS-26786, ordered remanded by award 27637, and now being resubmitted pursuant to such award.

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.

Third Division Award 27637 set forth in considerable detail the factual background of this case. There is no need to repeat it here. It is sufficient to say in general terms that the case involves a claim that the Carrier violated the Claimant's right, as a former employee of the Rock Island Railroad, of first hire for various employment opportunities on other Carriers. This statutory right is set forth in the Rock Island Transition and Employee Assistance Act (45 U.S.C. 907). It states in pertinent part as follows:

"Section 105(a) Each person who is an employee of the Rock Island Railroad on August 1, 1979, and who, prior to January 1, 1981, is separated or furloughed (other than for cause) from his employment with such railroad, or from his employment with another rail

carrier providing temporary service over lines of the Rock Island Railroad, as a result of a reduction of service by such railroad or such temporary service carrier shall, unless found to be less qualified than other applicants, have first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan designed to eliminate discrimination, that is required by Federal or State statute, regulations, or Executive order, or by the order of a Federal or State court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(b) The rights afforded to Rock Island Railroad employees by this section shall be coequal to the rights afforded to Chicago, Milwaukee, Saint Paul and Pacific Railroad Company employees by section 8 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 907)." (Emphasis added.)

The Board in Third Division Award 27637 found that a conference as required by the Railway Labor Act was not held and found based on the unique facts that it was appropriate to remand the case to the Parties for such a conference. The purpose of the conference was for a possible resolution and failing that resolution to allow the parties to properly develop a complete record containing all relevant evidence before submission of the case to the Board.

After remand the Parties exchanged various correspondence and a conference was held May 30, 1989. The Parties could not resolve the matter and the Petitioner resubmitted this claim for adjudication.

The Board has reviewed the record and has found facts present therein, developed since the remand, which are dispositive of the claim. Under Section 105(a) of the Rock Island Transition and Employee Assistance Act, it is true, as a general matter, that an employee of the former Rock Island or another Carrier providing temporary service who was separated has preferential hiring rights on other rail carriers. However, there is one exception. An employee separated "for cause" is excluded from the rights of first hire. The record reveals that the Claimant was separated from employment by a Carrier which provided temporary service over the Rock Island for cause. The evidence of this comes in the form of three Awards of Public Law Board No. 3024 which upheld the temporary Carrier's dismissal of the Claimant from service for a variety of serious offenses.

In view that the Claimant was separated from employment for cause he had no right of first hire in the first instance. Thus, the Carrier's subsequent failure to comply with certain procedural requirements of the Act administrator (the Railroad Retirement Board) did not damage or prejudice the Claimant.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.