

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29647
Docket No. MS-29417
93-3-90-3-354

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Raymond J. Gulick
PARTIES TO DISPUTE: (
(Boston and Maine Corporation

STATEMENT OF CLAIM:

"Whether or not Mr. Gulick is entitled to receive a lump sum separation allowance in accordance with agreements in existence on January 1st., 1984 under the Washington Job Protection Agreement of 1936, the New York Dock Labor Protection Conditions, and the Mediation Agreement of February 7, 1965. The lump sum award was one of the options available to Mr. Gulick when his position as a protected employee under the above cited agreements was terminated. Although he requested this payment, his letters of inquiry have never been answered, nor has any payment been forthcoming, or any reason offered why such payment was not rendered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant is a former General Agent at Whitefield, New Hampshire. The basis for this claim is set forth in a letter from Claimant's attorney dated November 20, 1989, as follows:

"Briefly stated, it is Mr. Gulick's position that in 1983 when he was informed on December 29th of that year that his position at the Whitefield Station was to be terminated as of January 12, 1984, his request for severance pay should have been granted. That pay amounted to roughly \$38,620.08 His request was never honored, nor was he promptly informed that for whatever reason he was not entitled to severance pay.

Shortly thereafter, Mr. Gulick turned the matter over to local attorneys who, for whatever reason, were unable to achieve a satisfactory resolution for Mr. Gulick, and as a result he has retained my services.

I trust that you will immediately review your file and make a determination from your position as to whether or not Mr. Gulick will be paid his severance pay...."

The Carrier defends against the claim on two procedural grounds asserting that first, the Third Division has no jurisdiction over this matter due to the fact that disputes under the asserted agreements are handled by boards established by those agreements and, second, Claimant was guilty of laches in bringing this dispute to this Board. With respect to the merits, the Carrier argues that because Claimant had the ability to exercise seniority to another position and failed to do so, he was not entitled to protective benefits.

The Carrier's laches argument concerning the bringing of the dispute to this Board is well-taken. The dispute arose in 1984 and it was not pursued to this Board until June 1990. See First Division Award 23867:

"...[T]he absence of a fixed limitation period does not mean that Claimant may indefinitely procrastinate the pursuit of her rights under Section 3 of the Railway Labor Act. First Division Award No. 22971. Otherwise, this Board would be confronted with the impossible task of deciding old, stale disputes. Under the particular circumstances of this case, we find that Claimant unreasonably delayed the prosecution of her case to this Division."

But even though the Carrier's laches argument bars this claim, even if this Board could reach the merits we would be unable to sustain the claim. See e.g., the 1965 National Agreement at Article II, Section 1:

"An employee shall cease to be a protected employee in case of his ... failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements ..."

The record sufficiently establishes that upon abolishment of his position at Whitefield in January 1984, Claimant could have exercised his seniority to another position and failed to do so. Because Claimant failed to exercise his seniority, he was no longer protected.

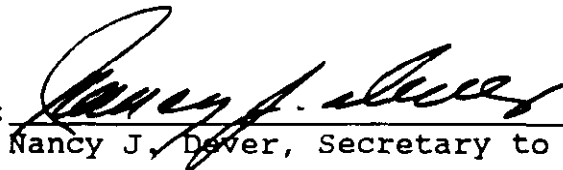
Based on the above, the claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.