

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31731
Docket No. MS-32221
96-3-94-3-606

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

(Charles J. Munafo

PARTIES TO DISPUTE: (

(Staten Island Rapid Transit Operating Authority

STATEMENT OF CLAIM:

"On the basis of harassment and discrimination and the fact I submitted two documents, Exhibit #2, Vehicle Condition Reports and Exhibit #1, Maintenance Log Book, of NRAB exhibits. I am seeking the following award: Reinstate to trackman/machine operator position with full seniority rights unimpaired retroactive to June 23, 1994 and all pay and monies lost from demotion of trackman/machine operator position (\$706.80 per week) to trackman position (\$645.30 per week), with all pay lost for the period of 30 days, 7 hours and 40 minutes, seniority rights as a driver for company vehicles which require New York CDL license and removal from service record of all hearings."

FINDINGS:

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

Parties to said dispute were given due notice of hearing thereon.

The Carrier takes the position that this Board lacks jurisdiction to decide this case. Its position is that the employees of the Staten Island Rapid Transit Operating Authority are not subject to the Railway Labor Act.

In an ICC decision dated September 21, 1987 it declared that the Staten Island Rapid Transit Operating Authority was no longer a Carrier as defined in Section 1, First of the Railway Labor Act. The Railway Labor Executives' Association appealed the decision to the United States District Court Eastern District of New York. On November 22, 1988 the Court issued the following judgment.

MISHLER, District Judge

"This action having come on for a hearing on the defendants' motion for summary judgment and plaintiffs' cross-motion for summary judgment before the court, Honorable Jacob Mishler, District Judge, presiding and the court having rendered its decision granting defendants' motion and denying plaintiffs' motion,

It is ORDER and ADJUDGED that the complaint be and the same hereby is dismissed on the merits; and

It is further ADJUDGED and DECLARED that the labor relations between Staten Island Rapid Transit Operating Authority ("SIRTOA") and its employees is not subject to the provision of the Railway Labor Act, 45 U.S.C. § 151 et seq. as of September 21, 1987 (I.C.C. decision and order); and

It is further ADJUDGED and DECLARED that employees of SIRTOA who allege injuries sustained while in the employ of SIRTOA, on and after May 1, 1986 do not have a right of action against SIRTOA to recover for such injuries under the Federal Employer's Liability Act ("FELA"), 45 U.S.C. § 51 et seq.; and

It is further ADJUDGED and DECLARED that SIRTOA is a public benefit corporation of the State of New York and a subsidiary of the Metropolitan Transportation Authority ("MTA"), created by the MTA pursuant to N.Y. Public Authorities Law § 1266(5) and its employees are public employees as defined in N.Y. Civ. Service Law § 200 et seq. (Taylor Law); and

It is further ORDERED and ADJUDGED that employees who allege injuries sustained while in the employ of SIRTOA on and after May 1, 1986 (Service date of I.C.C. decision authorizing abandonment and discontinuance of freight service) are enjoined, restrained and prohibited from instituting any action under FELA or prosecuting such claim that is presently pending.

Defendants shall recover of plaintiffs the costs of this action."

This Board was created by the Railway Labor Act for those employees and Carriers as defined in Section 1, First of the Act. Inasmuch as the Staten Island Rapid Transit Operating Authority and its employees have been adjudged as not covered by the Act, this Board lacks jurisdiction to hear this case.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of September 1996.