

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32382
Docket No. MS-32945
97-3-96-3-366**

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

**(Douglas Dufour
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“(a) The Carrier/Carriers acted in an arbitrary, capricious and unjust manner and violated the Collective Bargaining Agreement between the Parties when on December 7, 1990 it terminated the employment of Douglas Dufour and all of his rights under the Agreement without allowing him a hearing as provided in the Agreement.

(b) Carrier/Carriers shall be required to reinstate Clerk Douglas Dufour with all rights and privileges unimpaired and compensate him for all time lost as a result of such violative action.

(c) Carrier/Carriers shall reimburse Douglas Dufour for any amounts paid by him for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by the Carrier/Carriers.”

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, holder of a clerical position with Maine Central Railroad/Portland Terminal Company, the subject of 1987 lease transactions which resulted in the assumption of MEC/PT operations by Carrier in August 1987, which transactions were the subject of a March 13, 1990 Implementing Agreement Arbitration Award, approved by the L.C.C. on August 14, 1990, claims in his June 7, 1996 Notice of Intent and July 10, 1996 Submission to this Board that his termination by Carrier on December 7, 1990 was invalid as stated in the Statement of Claim. Claimant makes a number of assertions, including that the handling of his complaint was improper under the protective provisions of Mendocino Coast as contained in the Implementing Award and under the Agreement between Carrier and the Organization, citing and submitting copies of correspondence and claiming procedural violations, including denial of a fair and impartial Hearing on his termination.

Carrier maintains that pursuant to the provisions of the Implementing Award, Claimant was given an offer of employment on November 9, 1990.

Carrier maintains that Claimant did not timely respond to Carrier's offer of employment and cites its December 7, 1990 letter stating that because he had not done so, his rights to employment with Carrier, as well as his rights under the Mendocino Coast protective conditions, or under any Agreement, were terminated.

It further appears that Claimant appealed the termination of his employment rights to Director of Personnel L. T. Fay by letter dated December 14, 1990, and, pursuant to response by Carrier, to Director Labor Relations R. E. Dinsmore by letter dated January 28, 1991. On January 30, 1991, Dinsmore responded to Claimant that the issue of an offer of employment arose under the Implementing Award, and that there were no provisions within that Agreement for the holding of Hearings, and denied Claimant's request.

In response to inquiries by the Organization made by letter dated September 21, 1995, Carrier responded that Claimant was not employed or on a preferential hiring list or subject to recall, that Claimant had no employment history with Carrier, and that

Claimant was offered employment with Carrier pursuant to the Implementing Award and refused that offer.

In addition to arguing that Claimant's termination was the result of his refusal of a [second] offer of employment made under the Implementing Award, Carrier argues that the Board does not have jurisdiction because Mendocino Coast provides for resolution of disputes by an arbitration committee; no other forum may accept jurisdiction over this dispute, Carrier argues, submitting as authority Award 1, Public Law Board No. 5528, which dealt with New York Dock Conditions.

Carrier argues that the Board also lacks jurisdiction because this dispute was not handled in accordance with the provisions of the Railway Labor Act, including Section 3, First (i) and Section 2, First, Second and Sixth, in that no conference on the property was ever held between the parties to this dispute. Carrier cites First Division Award 24566 and Fourth Division Award 4978.

Carrier also argues that Claimant's delay in progressing this claim adversely affected Carrier's ability to produce relevant documents requiring that the doctrine of laches be applied, citing the time delay between the action complained of and the appeal to the Board. With reference to Director Labor Relations Dinsmore's January 30, 1991 denial of Claimant's appeal and Claimant's June 7, 1996 Submission to this Board, Carrier argues that Claimant delayed more than five years in progressing his claim.

We carefully reviewed the record and find no evidence that a conference took place on the property as required by the provisions of the Railway Labor Act, including those cited by Carrier. See Third Division Awards 27482 and 30114. A conference between the parties is also required by the provisions of NRAB Circular No. 1 issued October 10, 1934.

We have no evidence of record that a request for a conference was made on the property. Therefore, Carrier's contention that the Board is without jurisdiction to consider this claim must be upheld.

As cited, the provisions of the Railway Labor Act and of Circular No. 1 (NRAB Rules of Procedure) require that a dispute be conferenced on the property before it may be progressed to the Board. Therefore, the Board is without jurisdiction to consider this claim.

In view of the above determination, we find it unnecessary to rule upon Carrier's other procedural objections or to discuss the merits of the claim, other than to note that the Board is not the proper forum to hear claims of violation of the Mendocino Coast protective conditions as implemented. See Third Division Award 31680.

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 30th day of December 1997.