

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36000  
Docket No. MS-36844  
02-3-01-3-421**

**The Third Division consisted of the regular members when award was rendered.**

**(Douglas Harold Hartzell**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (Amtrak)**

**STATEMENT OF CLAIM:**

**"The Carrier (Amtrak) did violate the provisions in accordance with Special Board of Adjustment 1070 by returning me to the exact same Amtrak West Catering Services Divisions.**

**Why did the Carrier violate Special Board of Adjustment 1070, also potentially violating Pg. 3 of the Award in NRAB Division 3 docket 99-97-3-525 (MS-34009)?**

**Remedy: \$75,000 and reinstatement.**

**FINDINGS:**

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

**The carrier involved in this dispute is a carrier 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. The Claimant requested an Oral Hearing before the Board Members which was granted and scheduled for 1:30 P.M., Tuesday, February 26, 2002. The Board convened at the appointed time and awaited the Claimant's appearance for over 30 minutes. The Claimant did not appear nor did he request a delay.**

The Board made a thorough review of the record and has determined, as it previously did in Third Division Award 33508 rendered on September 22, 1999 (involving the same parties to the instant dispute) that the Claimant is not an employee of the Carrier, as defined by the Railway Labor Act.

A review of the Claimant's prior work history with the Carrier reveals that he was dismissed on March 27, 1995 for a Rule G violation when he failed to follow a direct order to report for a random drug test. His termination was appealed on the property and progressed to Special Board of Adjustment No. 1070 for adjudication. Award 8 of that tribunal, which was issued on December 8, 1995, ruled not to disturb the Carrier's decision of dismissal.

On July 1, 1997, the Claimant, as a former employee of the Carrier, filed an ex-parte Submission with the Third Division alleging various violations of federal statutes and seeking reinstatement. In Third Division Award 33508 the Board dismissed the claim stating it had no jurisdiction because (1) the Claimant was not an employee of the Carrier, (2) it had no authority to interpret or enforce Federal Laws and (3) it did not have appellate review of prior arbitral decisions.

Nothing has changed since the Claimant's last visit to the Board with this, his third attempt at reinstatement. He remains an ex-employee of the Carrier who has progressed yet another claim to the Board that neither involves an Agreement violation, nor was it handled in the usual manner on the property as required by Section 3, First (i) of the Railway Labor Act. In addition the Board is not empowered to review or set aside prior decisions of other tribunals. Therefore, the Board determines that the instant claim must likewise be dismissed because (1) the Claimant is not an employee of the Carrier (2) the claim was not properly progressed on the property and (3) it is outside the Board's jurisdiction to review past final and binding Awards, much less set them aside.

We have also determined that there is no evidence that either Award 8 of Special Board of Adjustment No. 1070, nor Third Division Award 33508 were "violated," as alleged. By this Award the Claimant is put on notice that the Board will not look favorably upon any additional claim filed by the Claimant unless his status is changed to that of an "employee" as that term is defined by the Railway Labor Act.

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**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 19th day of March, 2002.**