

Award No. 18507
Docket No. MS-18924

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

HENRY H. FULTON, JR.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

STATEMENT OF CLAIM: In compliance with instructions contained in your letter to me of October 27, 1969, 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 on June 27, 1970, covering an unadjusted dispute between me and the Atchison, Topeka and Santa Fe Railway Company involving the question:

That the AT&SF Railway Company unlawfully deprived me and discriminated against me when it refused to pay me severance allowance which was due me when my position as stenographer to Manager Mechanical Department, Position No. 17, exempt, was transferred from Los Angeles to San Bernardino, California, effective June 1, 1969. This claim is based on the fact that under Article V of the Non-Operating Agreement signed February 7, 1965, I qualified as a protected employee with 15 or more years of service with the AT&SF Railway Company and should have been given the option to make such transfer to San Bernardino (some 60 miles distant from my residence), or to resign and accept a lump sum separation allowance, which was denied me by Mr. L. B. English, Manager Mechanical Department, Coast Lines, and later upheld in that decision by President John S. Reed of the AT&SF Railway Company.

This severance allowance was paid to my fellow worker, Mr. Paul Newman, steno-clerk, Position No. 37, a union or scheduled position, of the same office who also qualified under the same agreement due to the fact he had over 15 years of service with the Company and his position was transferred to San Bernardino with the move of our office. It is my contention that the protection which is spelled out in Article V of said agreement is guaranteed to all employees under the National Railway Labor Act and the Washington Agreement.

The Company discriminated against me when it refused to pay me this severance allowance inasmuch as this allowance had been paid to other exempt employees in the past under similar circumstances.

The Company was in violation of the current working agreement when it abolished positions in both the Manager-Mechanical Department office in

Los Angeles and the office of Superintendent of Shops in San Bernardino (with which our office consolidated) in anticipation of the office consolidation. Most of the positions that were abolished were at the expense of the exempt employees due to the fact that the Company had been served a Section 6 Notice from the Organization to change most of the exempt positions in the office to scheduled status.

The Company is maintaining that I resigned from service on May 29, 1969, when in fact I was merely exercising what I construed to be my option of either resigning and accepting severance allowance or transferring with my position.

OPINION OF BOARD: Review of the record in this docket clearly shows that the claim Petitioner is attempting to assert before this Board was not handled on the property of the Carrier in accordance with the provisions of the applicable collective bargaining agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Therefore, the claim is barred from consideration by the Division and will be dismissed.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.