

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19751
Docket Number MS-19779

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Edwin C. Ring
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Please be notified that I intend to file an Ex Parte Submission on March 29, 1972; hence. I will this date notify Penn Central Railroad, Defendant, in writing, by sending them a copy of this notice.

It is my client's position that he was deprived of his rights earned in his years of employment with the Penn Central Railroad which included the right to the protection and compensation benefits then in effect for the employees of the Pennsylvania Railroad and/or the New York Central Railroad Company arising from the authorized coordination of said roads on termination of that employment in 1968. An attempt to secure redress through arbitration was unsuccessful and our client suffered inequities. My client has been and is damaged by the lack of definitive determination of his rights; and he is entitled to be relieved of that inequity. He is entitled to some authoritative decision as to whether his job of sign writer has been abolished or whether his employment has been wrongfully terminated. By the terms of the Interstate Commerce Commission, Act 49 U.S.C.A. § 5 (2) (f), the terms of the agreement between the Brotherhood of Maintenance of Way employees and the Pennsylvania Railroad and New York Central Railroad, the terms of the Washington Job Protection Agreement of May, 1936, the terms of the Agreement for the Protection of Employees in event of a merger of Pennsylvania and New York Central Railroads, (1964). My client is entitled to vindication of his rights.

A copy of Mr. Ring's Submission will be sent to the Defendant at the same time they are mailed to the Board of Adjustment. Thank you for your attention.

OPINION OF BOARD: The Agreement between the Carrier and the Brotherhood of Maintenance of Way Employees, dated August 29, 1957, contains a procedure for the handling of disputes between the Carrier and employees represented by that Organization. The pertinent Rules read as follows:

"1. The steps in the said usual manner of handling disputes growing out of grievances or out of the interpretation or application of agreements concerning rules, rates of pay or working conditions shall be, successively, with:

- (a) Superintendent of Personnel
(now Superintendent-Labor Relations and Personnel)

"(b) Manager of Labor Relations
(now Director-Labor Relations)

* * * * *

2. Each Superintendent of Personnel shall meet monthly with the District Chairman, and the Manager of Labor Relations shall meeting monthly with the General Chairman, for the purpose of disposing, if possible, of matters coming within the purview of the foregoing which have been listed, at least five (5) days in advance, for discussion at such meeting by either party. These meetings shall be held on dates scheduled in advance.

3. A submission, in the following form, shall be prepared with reasonable promptness by the Superintendent of Personnel and District Chairman, covering a controversial matter not disposed of with the Superintendent of Personnel:

(a) subject (which shall specifically set forth the nature of the controversy, date or dates, name of employe or employes and the rule or rules which may be involved.)

(b) Joint Statement of Agreed-Upon Facts.

(c) Position of Employes.

(d) Position of Company.

4. In addition to 'disputes growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions,' other questions may be presented and handled in the manner prescribed above at the monthly meetings.

5. (a) All controversies grown out of grievances or out of the interpretation or application of agreements which have been appealed to the Manager of Labor Relations and upon which agreement is not reached shall be promptly referred in the form of a joint submission, to The Pennsylvania Railroad-Pennsylvania-Reading Seashore Lines-Maintenance of Way System Board of Adjustment.

(b) All claims or grievances involved in a decision by the Manager of Labor Relations shall be barred unless within nine (9) months from the date of said Officer's decision the claim or grievance is filed with the Maintenance of Way System Board of Adjustment. 1/

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An examination of the record of this case reveals that it is deficient with respect to the rules in two respects: (1) There was a lapse of 19 months, from June 26, 1968 to February 20, 1970, in the perfection of Claimant's appeal; this period was well beyond the time limit for an appeal as set forth in the rules. (2) This case was not discussed at a monthly meeting of the Superintendent of Labor Relations and Personnel with the District Chairman, or finally at a regular meeting of the Director of Labor Relations with the General Chairman, as provided for in paragraph 2 of the Rules quoted above.

Section 3, First (i) of the Railway Labor Act provides in part:

"The disputes between an employee...and a Carrier... growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, ...shall be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the appropriate division of the Adjustment Board...."

This Board, in all Divisions, has consistently held that a petitioner must progress a dispute in the usual manner (in accordance with the applicable agreement) on the property for the Board to assume jurisdiction of the dispute. In Award 15075, for example, we said:

"The record is clear that the claim the Petitioner is attempting to assert before the 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 Adjustment Board. The Claim is, therefore, barred from consideration by the Division and will be dismissed."

In this case, since it is clear that the matter was not handled on the property in accordance with the Agreement or as contemplated by the Railway Labor Act, the claim must be dismissed for lack of authority to determine it upon the merits.

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;

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

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1973.