

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19790
Docket Number MS-19596

Alfred H. Brent, Referee

(Jordan Simpson
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company
(- Dining Car Department -

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of the intention by Gordon Simpson of 710 E. 89th Place, Chicago, Illinois to file an ex-parte submission 30 days from the date of this notice covering an unadjusted dispute between him and the Atcheson, Topeka & Santa Fe Railway Company involving the question:

"Whether, when separated as a sleeping car portion (sic) in charge by the Atcheson, Topeka & Santa Fe Railway Company on May 25, 1971 he was entitled to receive the option of a separation allowance or 30 months continued employment?"

OPINION OF BOARD: The petitioner, a furloughed Sleeping Car Porter, contends that he is entitled to receive the options which are made available to a "dismissed employee" under the terms of the National Railroad Passenger Corporation Agreement (NRPCA). The Carrier contends that this Board lacks jurisdiction to hear a dispute arising out of the National Railroad Passenger Corporation Agreement.

The jurisdiction of this Board has been clearly set forth by statute, defined and limited in innumerable awards and decisions. In point of fact, this Board lacks jurisdiction to enforce rights created by State or Federal Statutes and is limited to questions arising out of the interpretations and application of Railway Labor Agreements.

This Board has no jurisdiction to consider any dispute unless it has been "handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes."

Section 2, First and Second, Railway Labor Act, require that carriers and their employees shall "exert every reasonable effort to settle disputes" arising between them, and that such disputes "shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized to so confer."

The highest Federal courts have ruled that such provisions in the Railway Labor Act establish minimum requirements to which carriers and employees must conform. The U. S. Courts of Appeals for the Second and Seventh Circuits (Rutland Ry. vs. BLE, 307 F. 2d 21, 41; Edwards vs. St.L-SF, 7 Cir., 361 F 2d 946, 954) have held that in order to satisfy these minimum requirements "men of good faith must in good faith get together in a sincere effort to resolve their differences." The Court of Appeals for the Second Circuit went on to say that "the representatives of management should meet with those of labor. Each side should listen to the contentions of the other side and each side should explain its position clearly and honestly." The U.S. Supreme Court (EJ & E vs. Burley, 325 U.S. 711, 721 n. 12) has said that "one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it."

Thus, the manifest objective of the Railway Labor Act is to require both sides to a dispute to come together on the property and make complete, open and honest disclosure of their respective positions in an effort to reach agreement. It is impossible for a party to comply with the RLA requirements without disclosing to the other side on the property all of the arguments, the evidence, and the agreement provisions relied upon.

Numerous unanimous awards of this Division have recognized its lack of jurisdiction to consider any claim that has not been handled in the usual manner in accordance with the provisions of the Railway Labor Act. See Awards 12193, 15075, 15076, 19294 (without referee).

Clear requirements of the law, our Circular 1, and many consistent awards preclude us from considering a claim that was never handled on the property in the usual manner: Awards 16615 (Brown), 17534 (Dugan), 17563 (Ritter), 17624 (Ellis), 17693 (McGovern), 17796 (Quinn), 18266 (Dolnick), 18364 (Ritter), 18380 (O'Brien), 18417 (Dugan), 19179 (Edgett), 19227 (Hayes), 19232 (Devine), 19300 (Cole), among many hundreds of others.

Finally, this Board has no power to go beyond the issues raised in the original statement of claim: "Whether, when separated as a sleeping car porter-in-charge by the Atchison, Topeka and Santa Fe Railway Company on May 25, 1971 he was entitled to receive the option of a separation allowance or 30 months continued employment."

Award 11006 (Boyd):

A considerable part of the submission has dealt with what amounts to a protest to the manner of giving examinations and the way in which the Carrier has handled the training of its apprentices. This was not made a part of the initial claim nor is it encompassed in the Statement of Claim filed with the Division. We can not, therefore, make any findings with respect to such protest.

Award 15523 (Kenan):

The Employees also contend that Bulletin No. 628 does not conform to the bulletin requirements established by Rule 9 and that it and all actions taken under it must, therefore, be rescinded. Without question, Bulletin No. 628 does not follow the form established by Rule 9. However, this attack on the bulletin is not properly before this Board. The Employees' statement of claim attacks the bulletin only for imposing the welding requirement on applicants for the Carpenter 2nd Class position. The Board is limited to the issues raised in the statement of claim.

Award 17512 (Dugan):

Under the Railway Labor Act, and our rules of procedure, the only question properly before us is that presented in the formal statement of claim. Other matters, such as alleged applicability of Rule 32, which are not shown to have been placed in issue on the property are not before us, and therefore can be given no consideration.

Award 18239 (Dolnick):

This Board has no power to go beyond the issues in the Statement of Claim.

Also see Awards 16955 (Brown), 17525 (Dugan), 19306 (Devine).

This Board lacks jurisdiction and the claim must 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 Board lacks jurisdiction and the claim must be dismissed.

A W A R D

The claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Ziller
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1973.