

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20677
Docket Number MS-20720

Irwin M. Lieberman, Referee

(Jack Harford
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: 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 March 28, 1974, covering an unadjusted dispute between myself and the Chesapeake and Ohio Railway Company involving the following question:

The carrier violated the terms of Rule 23 and others that may apply, of General Agreement No. 9, when they abolished report clerk, position No. C-32, located in the west yard office at Hinton, Summers County, West Virginia, effective at 12:30 a.m., June 16, 1972, and transferred duties from that position to other locations without proper agreement as called for in Rule 23.

OPINION OF BOARD: Claimant herein had been assigned to the position of Report Clerk, C-32, in Carrier's West Yard Office at Hinton, West Virginia. Claimant with some thirty-one years of service with Carrier, had a hearing disability. Effective June 16, 1972 Position C-32 was abolished. The record indicates that Claimant retired and accepted a disability annuity under the Railroad Retirement Act, effective June 16, 1972.

First it is noted that the Claim in this dispute merely alleges a violation of the Agreement, particularly Rule 23, in the abolition of Claimant's position on June 16, 1972 and does not request a remedy. In the submission, however, Petitioner seeks alternatively severance pay or back pay until such time as he be offered employment by Carrier.

Claimant makes a number of allegations in his submission and rebuttal statements including the statement that he was not permitted to exercise his seniority rights and that he was told by Carrier officials to apply for a disability pension. He also contends that the abolition of his position and assignment of the remaining duties constituted a violation of Rule 23: a consolidation, division or reorganization. A careful examination of the record of this dispute indicates that there is no evidence to support any of these allegations. Further, Claimant's argument with respect to Rule 55 is unsupported and questionable because he was granted a disability annuity. This Board has held consistently that argument alone is insufficient to sustain a Claim; the arguments must be supported by probative evidence and the burden is upon Petitioner to provide such evidence. For all the reasons above, we have no alternative but to deny this Claim.

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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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.