

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20875
Docket Number MS-20932

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: This is to serve notice, as required by the rule of the National Railroad Adjustment Board, of my intention to file an ex parte submission on August 1, 1974 covering an unadjusted dispute between me and the Atchison, Topeka and Santa Fe Railway Company involving the question:

Must petitioner be forced to submit an application to, and accept employment with, the National Railroad Passenger Corporation in order to maintain a protected employment status even though his position would thereby be worsened and would require a change in residence.

OPINION OF BOARD: Petitioner brings this dispute to this Board based on possible rights he may have under the National Railroad Passenger Corporation Agreement and the implementing Agreement signed by Carrier and the Organization dated December 14, 1973.

An examination of the record of the dispute reveals that at no time did the problem receive the handling on the property normally followed by the parties to the January 1, 1969 Agreement between Carrier and the United Transportation Union, including appropriate timely appeals and finally a conference. Section 3 First (1) of the Railway Labor Act, as amended, precludes this Board from considering a 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" The National Railroad Adjustment Board, in all of its Divisions, has consistently over the years declined to assert jurisdiction in situations analagous to that herein, as mandated by the statute. For this reason we cannot consider the merits of this dispute and it 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;

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That the Board does not have jurisdiction.

A W A R D

Claim dismissed.

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By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.