

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21853
Docket Number MS-21766

George S. Roukis, Referee

PARTIES TO DISPUTE: (Shirley H. Stone
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: As an employee of the Penn Central Transportation Company I have the following subject to list with the Third Division, National Railroad Adjustment Board for adjudication:

"Protest of the removal of the name of Shirley H. Stone from the 1975 Lake Seniority District Clerks Roster. Request that Mrs. Stone's name be restored to that roster with the appropriate seniority date of August 13, 1956."

OPINION OF BOARD: Careful examination of the entire record, which includes submissions of the Petitioner (an individual), Respondent Carrier, and by Third Party Notice Hearing the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, discloses that this dispute is not one over which this Board has jurisdiction. The record discloses that the dispute is an articulate expression of Petitioner's dissatisfaction over the terms and provisions of an agreement dated April 19, 1974, between the Carrier and BRAC. Petitioner sets forth four points, arguing (Employee's Position):

- "I. It violates the provisions of Section 2 Fourth of the Railway Labor Act in that it makes the Company a party to an attempt to influence or coerce its employees to join or remain members of a labor organization.
- II. It violates Section 3(a) of the Union Shop Agreement of August 29, 1952 which provides that an employee who retains seniority under a Schedule Agreement like myself, and is transferred to full time employment not covered by such agreement, like myself, will not be required to maintain membership as provided in Section 1 so long as they remain in such other employment.

- "III. It violates Section 4 of the Union Shop Agreement in that membership is not available to me in my present non-agreement employment on the same terms and conditions as are generally applicable to other members working on positions fully covered by the Brotherhood of Railway, Airline and Steamship Clerks Schedule Agreement.
- IV. It is a discriminatory agreement because it provides that only those employees who have been promoted to fully excepted or official positions on or after March 22, 1969 must become members or retain membership in the Clerical organization and not all employees in a promoted status whose seniority is being continued regardless of when they were promoted."

Section 3, First (i) of the Railway Labor Act confines the jurisdiction of the National Railroad Adjustment Board to disputes concerning "the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The Board has no jurisdiction to consider allegations concerning the legality of agreements entered into pursuant to the settlement of proper Section 6 Notices. An individual's expressed dissatisfaction with the terms and provisions of such agreements, and allegations that the agreements are illegal or discriminatory without even a hint of allegation that the agreement is not being properly applied, clearly constitutes a case over which the Board lacks jurisdiction. See Awards 12466, 13830, 19142, and 20078 of this Division and Awards 1012, 1145, 3863, 4073, 6948, and 7077 of the Second Division. Also, see 343 U.S. 768 Brotherhood of Railroad Trainmen vs. Simon L. Howard, Sr., wherein the Supreme Court held: "The claims here cannot be resolved by interpretation of a bargaining agreement so as to give jurisdiction to the Adjustment Board under our holding in Slocum vs. Delaware, L&W.R. Co., 339 U.S. 239. This dispute involves the validity of the contract not its meaning." The claim 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;

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The Board lacks jurisdiction.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.