NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21893
THIRD DIVISION Docket Number MS-21902

John P. Mead, Referee

PARTIES TO DISPUTE: (Richard L. La Pearle
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(Bessemer and Lake Erie Railroad 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 August 3, 1976 covering an unadjusted dispute between me and the Bessemer & Lake Erie Railroad Company involving the question:

"Whether I am physically able to return to work as a track laborer with the Railroad."

OPINION OF BOARD: The operative facts of this case are reasonably clear. They are:

1. Claimant Richard L. La Pearle entered Carrier's service as a Trackman on June 10, 1974;

2. Claimant La Pearle resigned from Carrier's service effective April 28, 1975;

3. On or about April 2, 1976, Claimant La Pearle was disapproved by Carrier for re-employment as a Trackman;

4. By letter dated August 3, 1976, Claimant La Pearle notified the Third Division, National Railroad Adjustment Board of his intent to file an Ex Parte Submission covering the subject:

> "Whether I am physically able to return to work as a track laborer with the Railroad.";

5. In Petitioner's Rebuttal to Carrier's Ex Parte Submission, for the first time, contentions are advanced that allege:

   A. Claimant's resignation was "coerced".

   B. Claimant was discharged in violation of Rule 29(a) (DISCIPLINE).

C. Claim for lost wages plus interest was advanced.

We have carefully reviewed the entire record in this case and have seriously considered all of the arguments advanced by all parties involved in this dispute including those presented by the respective representatives at the hearing held on January 25, 1978.

It is our conclusion from this record that Claimant La Pearle was not, on August 3, 1976, an "employee" of the Carrier as the term "employee" is used and intended in Section 1, Fifth, Section 2, Second and Section 3, First (i) of the Railway Labor Act, as amended. There is no valid showing in this record that Mr. La Pearle's resignation of April 28, 1975 was anything other than voluntary. Therefore, inasmuch as he had taken himself out of the ranks of Carrier's employes, "* * * no grievance or dispute exists over which this Board has jurisdiction * * *." (Third Division Award No. 18107). See also Third Division Award Nos. 9472, 15565, and 18912.

Even if we were able to overcome the fatal defect outlined above, we would still be confronted with the fact that Section 3 First (i) of the Railway Labor Act, as amended requires that all disputes be "handled in the usual manner" on the property before they may be submitted to this Board for adjudication. This requirement is jurisdictional. Thus, it is manifestly clear that the objective of the Act is to require both sides to a dispute to come together on the property "in the usual manner" and make a complete, open and honest disclosure of their respective positions in an effort to reach agreement.

From the record in this case, it is apparent that no claim or grievance was presented in writing on the property to any Carrier Officer as required by Rule 37 of the Agreement. It is further apparent from the contents of Petitioner's letter of August 3, 1976 listing this case with this Board that no monetary claim was made prior to the presentation of Petitioner's Rebuttal to Carrier's Ex Parte Submission. The well-settled rules of procedure of this Board, including Circular No. 1 of the Board, require that we limit our consideration to the issues properly raised on the property.

Because no claim or grievance relative to Rule 29 was properly initiated on the property, the jurisdictional requirement of handling claims "in the usual manner" as mandated by Section 3, First (i) of the Railway Labor Act, as amended, has not been met. See Third Division Award Nos. 21730, 20889, 20627, and 20165.

Additionally, inasmuch as the disciplinary issue argument and the monetary claim - including the demand for interest - was made for the first time in Petitioner's Rebuttal to this Board, such contentions come too late and are beyond our authority to consider. See Third Division Award Nos. 20639, 20598, 20468, 19746, and 19101.

Based upon the state of the record before us, it is clear that the individual here involved was not an "employee" within the purview of the Railway Labor Act, as amended, when this dispute came to this Board; that the dispute was not handled "in the usual manner" on the property; that the time limit requirements of Rule 37 have not been complied with and that the subject of the dispute was altered after having been presented to this Board to include an argument dealing with an alleged violation of Rule 29 - Discipline along with a monetary claim (including interest).

Any one of the foregoing is sufficient to justify a dismissal of this claim. When considered in consort, we are left with no alternative but to dismiss the claim in its entirety.

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 Petitioner involved in this dispute is not an Employe of Respondent Carrier within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Carrier involved in this dispute is a Carrier within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That even if the Board were able to overcome the hurdle of the procedural deficiences, we would, after a review of the record on the merits, be compelled to conclude that the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD AJDUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.