

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21966
Docket Number MS-22056

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Elmer W. Rieck
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(New York, Susquehanna and Western 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 covering an unadjusted dispute between me and the New York Susquehanna and Western Railroad involving the question:

After reading letter from Mr. Smith dated September 15, 1976., I submitted bid on September 17, 1976. for my former position as signal maintainer at Hackensack, New Jersey. No effort was made to acknowledge bid.

The accusations put forth by Mr. Smith are very vague with no factual evidence given as to specific times, dates, and municipalities allegedly making complaints.

I was asked to resign from the railroad. This I felt I could not do without a proper and fair hearing.

OPINION OF BOARD: On September 17, 1976, the Claimant was removed from service "in all capacities." At the time, he was assigned to a non-agreement Signal Supervisor position, and he attempted to exercise a displacement right into the Signalman's group, but he was not permitted to do so.

Thereafter (on December 28, 1976), Claimant filed the instant dispute with this Division.

Neither the Statement of Claim in the Petitioner's letter of intent, nor the Ex Parte Submission to this Board, sets forth the remedy which Claimant seeks, although alleged violations of certain Rules of the Signalman's Agreement are contained in Petitioner's Rebuttal to Carrier's Ex Parte Submission, and he poses six (6) questions which seem to request that we reinstate him to service in the Signalman's class, with compensation for wages lost since September 17, 1976.

We have carefully reviewed the entire record in this case and have considered all of the arguments advanced by the parties, including Claimant's presentation to us on February 1, 1978.

But, our review of the record convinces us that no claim or grievance was ever presented, in writing, to any Carrier Officer on the property, as required by the applicable agreements. In fact, it is apparent from Claimant's "letter of intent" to this Board that no definable claim had been made, and most certainly, no monetary claim was advanced prior to the submission of Claimant's Rebuttal to Carrier's Ex Parte Submission.

This Board may not attempt to adjudicate disputes on some basis of "equity, fairness or hardship." Rather, it is clear that we are restricted and confined to the interpretation and application of collectively bargained agreements. Well-settled rules of procedure of this Board under the Railway Labor Act, as amended, and this Board's Circular No. 1 require us to confine and limit our consideration solely to those issues which have been properly joined on the property.

When (as is the case here) no claim or grievance is properly initiated on the property, we lack the jurisdictional requirement that a claim have been handled "in the usual manner" as is mandated by Section 3, First (i) of the Railway Labor Act, as amended. Thus, when that requirement is not met, we are without jurisdiction over the dispute, and may not issue an Award on the merits. See, for example, Third Division Awards 21730, 20889, 20627 and 20165.

We are inclined to note, however, that even if we were (in some manner) able to consider the dispute on its merits, we would still be confronted with the unavoidable fact that Claimant's entire argument as to Rules assertedly violated, monetary claims, affidavits, etc., was made, for the first time, in the Rebuttal Submission to this Board. "New evidence" (assertions not having been made on the property) may not be considered by this Board in the first instance. See, for example, Third Division Awards 20639, 20598, 20468, 19746 and 19101.

Without waiving the fatal procedural defects outlined above, we would point out:

1. that none of the Rules cited have any application to claimant while he was employed in a supervisory capacity;
2. that claimant's supervisory position was not abolished nor was he demoted (Rule 42);

3. that claimant did not voluntarily relinquish his supervisory position (Rule 43);
4. that claimant was not laid off by reason of force reduction (Rule 45); and
5. that claimant did not accept promotion and then fail to qualify within thirty (30) days (Rule 55).

Based upon the entire record before us, it is clear that the dispute in this case was not handled "in the usual manner" on the property and that the subject of the dispute was expanded after having been presented to this Board. Either one of the foregoing situations is sufficient to justify a dismissal of this claim. When considered in concert, 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 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 the claim was not progressed on the property as required by the Railway Labor Act.

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

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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