

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award Number 22439
Docket Number MS-22751

PARTIES TO DISPUTE: (Jack L. Spani
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 (Burlington Northern Inc.

STATEMENT OF CLAIM: "After properly filing my name in accordance with Rule 9, in 1977, I am still waiting to be called back as of Sept. 15, 1978. Since the first of 1978 union men lower in seniority (sic) have been hired. When I found out other men were working, I promptly contacted F. C. Crotty, President of Brotherhood of Maintenance of Way Employees. I stated that I was entitled to back pay for the time I was not working. The union submitted a claim with Burlington Northern (sic) for back pay on August 15, 1978. As of September 15, 1978 I have not been informed of any further action being taken by the union or the railroad."

OPINION OF BOARD: Claimant was employed as a section laborer on March 30, 1977. On September 5, 1977, Claimant was laid off account reduction in force. Claimant contends that he filed proper notice under Rule 9 of the Parties' Agreement to retain seniority and advise of recall when the forces would be increased. In mid 1978, Claimant learned that forces had been increased and a claim submitted to Carrier account their failure to recall Claimant to service in accordance with his seniority standing. The instant claim was filed with the Board September 15, 1978 seeking back pay from June 21, 1978 until the claim is settled. There is no request for reinstatement of seniority by Claimant. On the other hand, Carrier in response to claim filed on the property covering said violation declined claim account Claimant's failure to file name and address as required by Rule 9 of the Parties' Agreement. Carrier further contends that certain procedural and jurisdictional errors appear in the instant claim, including Claimant's premature filing of this claim with the Third Division, while the claim instituted on the property was still being progressed in accordance with provisions of the Parties' Agreement.

It is quite obvious from a review of the instant claim that on the date that Notice of Intention was filed with this Division, the primary claim was in the appeal stage of handling on the property and the instant claim as set forth has not met the requirements of Section 3, First (i) of the Railway Labor Act, Circular No. 1 of the National Railroad Adjustment Board, nor Rule 42 of the Parties' Agreement.

Given the undisputed fact that these requirements have not been fulfilled in this claim, we have no choice but to dismiss the claim for lack of jurisdiction.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employee involved in this dispute are respectively Carrier and Employee 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, and that this Division of the Adjustment Board does not have jurisdiction to decide the dispute involved herein on its merits;

That hearing thereon has been held and concluded; and

That the claim is barred.

A W A R D

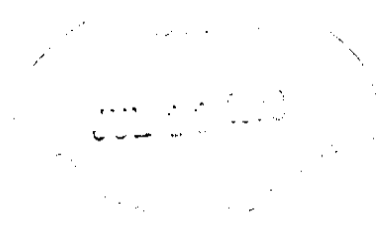
Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.



These principles are equally applicable today in this case. See also Third Division Award Nos. 20581 (Franden), 19556 (Lieberman), 18476 (Rimer) among others. The opinions expressed in Second Division Award No. 6628 are equally appropriate to the fact situation in this case. There we find:

"Since it is well nigh impossible to ascertain claimant's subjective state of mind at the moment he wrote out his resignation, we must make a determination of the issue at hand from facts existing at that time. The fact that Mr. Becker suggested resignation does not amount to coercion, nor does the alternative of either facing a hearing or resigning. The Organization must come forward with sufficient evidence from which we could conclude that an individual of normal sensibilities would feel compelled to resign due to coercion or intimidation by a Carrier officer. We do not feel the Organization has sustained this burden imposed upon it. Claimant himself stated that he 'assumed' he could have been fired; that Mr. Becker 'implied' that he would be fired; and that he wrote out his resignation feeling he had no alternative. Such does not constitute coercion, duress, or intimidation on the part of a Carrier officer. Rather, it constitutes misapprehension (sic) of the facts on claimant's behalf for which he must bear the consequences.

"Nor did Carrier violate Rule 39 (Discipline) in not holding a hearing relative to this issue. That Rule guarantees that an employee will not be disciplined or discharged without first being given a hearing. It is inapplicable herein as we are not faced with a discipline or discharge but with a resignation."

Petitioner in this case has failed to meet the burden of proof that claimant's resignation was secured through coercion or duress. There is no basis upon which to find a violation of any of the Rules of the controlling Agreement. Having voluntarily terminated his employment with the Carrier, all of claimant's rights under the collective Agreement were terminated. Accordingly, this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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:

W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1979.