

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22563
Docket Number MS-21924

James F. Searce, Referee

PARTIES TO DISPUTE: (John G. Dinga
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "By permission of and in compliance with Section 3 First (i) of the Railway Labor Act, I do hereby serve notice, in satisfaction of the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission sooner than September 20th, 1976 covering an unadjusted dispute between me as Claimant John G. Dinga and the Norfolk and Western Railway Company, copy of this letter of notice to it as required and as indicated on Page Two. The dispute involves the issue and issues so typed following:

- 1) Carrier on October 16th, 1973 or prior thereto violated and continues to violate the applicable provisions of the Washington Job Protection Agreement of 1936 as amended by the provisions of the 'Agreement for Protection of Employees' dated April 16 and made effective January 10, 1962 and 'Memorandum of Understanding' in connection therewith, also 'Memorandum Agreement' and 'Memorandum of Understanding' both dated April 7th, 1965, also 'Memorandum Agreement' dated March 21, 1966, also Implementing Agreement and Memorandum of Understanding dated October 14, 1971 and Memorandum Agreement dated August 4, 1971, concerning the application of Appendix C-1, Public Law 91-518, also the Master Agreement effective April 1, 1973 containing Supplemental Agreement 'B'; Carrier has compounded these violations by its selective refusal thrice to become part of an Arbitration Committee, each such refusal unsustainable precluding the application of Interstate Commerce Commission-prescribed protective conditions and arbitration procedures to settle this dispute.
- 2) The Carrier will be required to furnish Claimant John G. Dinga, Clerk - Traffic Department, Off Line Sales Office, Eastern Seniority District No. 9, New York City, a job within his general locality.

- "3) The Carrier shall be required to restore Claimant John G. Dinga to service with all fringe benefits, rights and privileges pertaining thereto, and compensate him at his protected rate of pay for all time lost, until Carrier complies with the Protective Agreements of January 10, 1962 and Memorandum of Understanding in connection therewith, also 'Memorandum Agreement' and 'Memorandum of Understanding' both dated April 7th, 1965, also 'Memorandum Agreement' dated March 21, 1966, also Implementing Agreement and Memorandum of Understanding dated October 14, 1971 and Memorandum Agreement dated August 4, 1971, concerning the application of Appendix C-1, Public Law 91-518, also the Master Agreement effective April 1, 1973 containing Supplemental Agreement 'B'.
- 4) Carrier shall be required to pay interest at the rate of six percent (6%) annually on all money due claimant or at a higher or lower annual percentage rate as to the Division may seem just and proper."

OPINION OF BOARD: It is well-established that the scope of this Board's authority extends only to an assessment of the record of a case and a determination as to whether or not the actions of the parties-at-interest are in conformance with applicable laws, provisions of Agreements between the parties and any and all rules, policies and other regulations which have been cited and/or brought to bear upon the issues involved. Essentially, this Board is appellate in nature and our authority does not extend to matters of equity.

In order for this Board to consider a case, the written record of its handling "on the property" is placed before it. Where the request is properly made, a "Referee Hearing" is arranged to permit the specific parties to the dispute -- including the Claimant, to present, to the Board, a recitation of their positions, thus permitting the opportunity to re-emphasize, illuminate or otherwise direct attention to the salient aspects of their positions.

The record of this case indicates that the Claimant has for several years sought a review of this case before the Third Division.

Such efforts having come to fruition -- even to a Referee Hearing -- this Board was not to hear from the Claimant, who was duly and properly notified of the time and date but, who for reasons not available to us, chose not to appear.

Thus, it becomes the duty of the Board to review the record of this case to determine if a showing has been made that the Claim, as set forth herein, has merit. This was no mean task, considering the plethora of correspondence, formal submissions and citations involved, and the matters attendant to this case. It will serve no useful purpose to reiterate the myriad attempts employed to bring this case to a conclusion; it is not this Board's obligation to do so. Suffice it to say that we find no palpable error on the Carrier's part, insofar as its responsibilities under the Railway Labor Act and the applicable Agreement are concerned. We are not unmindful of the Claimant's status and condition, but we are obliged to look to the provisions of the Agreement at issue here and can but conclude that no showing has been made that the Carrier has failed to meet its statutory and contractual obligations. We take note of the considerable efforts by the Carrier and Organization -- which fell outside the limits or requirements of the applicable provisions -- to arrive at a satisfactory accommodation. The fact that such extra-contractual efforts were extended does not, in our opinion, prejudice the parties' rights to reassert to their positions protected by the applicable Agreement, when such special efforts prove fruitless.

In sum, we conclude that the Claimant's rights under the Railway Labor Act and the applicable Agreement have been fully protected in the execution of this complex and protracted case. We find no basis to affirm the claim before this Board.

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

Award Number 22563
Docket Number MS-21924

Page 4

That the claim be dismissed.

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Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.