

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23337
Docket Number MS-23915

PARTIES TO DISPUTE: (Walter E. Corran
(
(Cambria and Indiana Railroad Company

STATEMENT OF CLAIM: "Description of Dispute: Walter E. Corran, Trainmaster (Dispatcher) claims personal discrimination in not being offered opportunity to move from 2nd shift position to daylight position that became available through retirement of daylight trainmaster (Dispatcher). Walter E. Corran having 30 years service with the company and having been promoted to Extra Dispatcher on 6/1/57 and regular dispatcher 3rd shift 10/1/65 and again to 2nd shift dispatcher on or about 10/23/73 and during any and all temporary vacancies of 1st shift dispatcher due to illness, vacation, etc. moving up and fulfilling all duties of 1st shift dispatcher, etc."

OPINION OF BOARD: The facts in this case show that claimant occupied an official, non-agreement, supervisory position of Trainmaster (Dispatcher) on the Cambria and Indiana Railroad Company, a wholly owned subsidiary of the Bethlehem Steel Corporation. In November, 1980, to replace a retiring Trainmaster, Carrier brought in a supervisory employee from another "Steel" railroad rather than reassigning claimant to the retiring Trainmaster's position. The dispute outlined in the Statement of Claim above resulted from this action. Subsequent to Claimant's notice of intent to this Board (1-19-81), he voluntarily retired from the service of the Carrier effective January 31, 1981.

The jurisdiction of this Board comes from Section 3, First (i) of the Railway Labor Act, as amended. That Section refers to "disputes between an employee or group of employees and a carrier or carriers etc."

It is generally recognized that non-agreement Trainmasters are excluded from the definition of employee in Section 1, Fifth of the Railway Labor Act, as amended, and in the orders of the Interstate Commerce Commission (Ex Parte 72) as well as in the Craft and Class Determinations of the National Mediation Board.

Therefore, the dispute as described above is barred from consideration by this Board and is accordingly dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That hearing as requested was held and concluded;

That the Carrier involved in this dispute is a Carrier within the meaning of the Railway Labor Act, as approved June 21, 1934, but the Employee is not an Employee within the meaning of that Act;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

