

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23579
Docket Number MS-23848

John B. LaRocco, Referee

PARTIES TO DISPUTE: { V. A. Brauchi
Atchison, Topeka and Santa Fe Railway 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 22, 1980, covering an unadjusted dispute between me and the Atchinson, Topeka and the Santa Fe Railway Company involved in the question:

Separation pay benefits not paid to V. A. Brauchi upon separation from the Atchinson, Topeka and Santa Fe Railway Company on June 30, 1980, in accordance with the protective agreement between P&SF Railway Company and GC&SF Railway at the time of their merger."

OPINION OF BOARD: Claimant contends he was deprived of certain severance benefits which were allegedly due him under the July 2, 1965 Merger Protection Agreement involving the Carrier, the Gulf, Colorado and Santa Fe Railway Company and the Panhandle and Santa Fe Railway Company. In 1978, the Claimant took early retirement rather than accept a transfer of his position as a freight claim adjuster from Amarillo, Texas to Topeka, Kansas. According to the Claimant, he was forced into early retirement because an illness prevented him from moving to Topeka and because the Carrier wrongfully refused to allow him to resign with the severance benefits. The Carrier specifically denies all of Claimant's allegations and emphatically asserts that Claimant is not covered by the 1965 Merger Protection Agreement. Furthermore, the Carrier argues that this Board lacks jurisdiction to adjudicate the claim since it was not handled on the property in accord with the Railway Labor Act.

Claimant retired from the Carrier's service on June 30, 1978. The first time that Claimant, in writing, asserted his claim for benefits under the 1965 Merger Protection Agreement was on July 24, 1980 when the Claimant filed his notice of intent to file an ex parte submission with this Board.

In order to vest jurisdiction in this Board, the claim must be progressed in accord with the provisions of the Railway Labor Act, 45 U.S.C. §151 et seq. The relevant portion of Section 2, First and Second of the Act states:

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort ... to settle all disputes..." 45 U.S.C. §152, First.

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between

representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." 45 U.S.C. §152, Second.

Section 3, First (i) of the Act mandates that all disputes between an employee and a carrier, "... be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes..." 45 U.S.C. §153, First (i). Section 301.2(b) of the Rules of Organization and Procedure issued by the National Railroad Adjustment Board as Circular No. 1, October 10, 1934, states:

"(b) No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934." (Emphasis added.)

The record before us clearly demonstrates that claimant failed to bring his claim through the various levels of appeal on the property up to the highest designated Carrier officer. The Claimant did not make reasonable efforts to settle the dispute or engage in a conference with Carrier representatives as required by the Railway Labor Act. This Board lacks jurisdiction to consider the merits of any dispute unless it has been handled in accordance with the above cited sections of the Railway Labor Act and Circular No. 1. Third Division Award No. 19790 (Brent). Thus, we must dismiss the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Bresch
Rosemarie Bresch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.