

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23850
Docket Number MS-23900

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Walter Flowers
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Whether the undersigned employee is entitled to the benefits as provided by Appendix C-2 To The National Railroad Passenger Corporation Agreement with its employees et.al, dated July 5, 1973 as a result of the actions of the said Employer."

OPINION OF BOARD: On at least three occasions in 1980, claimant applied for benefits he asserted were due him under Article I of Appendix C-2 of the July 5, 1973 Agreement between the Carrier and its employees. The Carrier denied each of claimant's applications and claimant properly appealed his claim on the property. Claimant now brings his claim to this Board contending he was a displaced employe within the meaning of Article 1(b). The Carrier specifically denies that claimant is entitled to any C-2 benefits because he did not suffer any loss of either compensation or other employment conditions as the result of the discontinuance of inter-city rail passenger service. In addition, the Carrier argues that Article IX of Appendix C-2 expressly provides that any dispute over C-2 benefit entitlements must be submitted to a Public Law Board and, thus, this Board lacks jurisdiction to resolve the claim on its merits.

Article IX(a) of Appendix C-2 states:

"(a) In the event any dispute or controversy arises between the parties hereto with respect to the interpretation or application of any provision of this Appendix, except Articles III and X, which cannot be settled within thirty (30) days after the dispute arises, such dispute may be referred by either party to the dispute to a Public Law Board for consideration and determination." (Emphasis added.)

The parties, through negotiations, have expressly agreed that a Public Law Board should be the exclusive forum for adjudicating disputes arising under Appendix C-2 (except for disputes arising under Articles III and X). We must accept and respect the parties' negotiated dispute resolution procedure. Third Division Award No. 22093 (Sickles). Though Article IX uses the permissive term "may" when it refers to a Public Law Board, the use of such a term does not give the parties a chance to select alternative forums for resolving Appendix C-2 disputes covered by Article IX since no alternatives are expressly stated. Third Division Award No. 21706 (Lieberman).

Claimant's complaint is clearly based on Article I of Appendix C-2. Since Article IX therein expressly provides a forum for resolving controversies arising out of Article I of Appendix C-2, this Board lacks jurisdiction to consider this claim.

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 does not have jurisdiction over the dispute involved herein.

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 Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.

