

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25346
Docket Number MS-25271

George S. Roukis, Referee

(G. W. Wood
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of G. W. Wood on Burlington-Northern, Inc.

by G. W. Wood who was displaced on March 24, 1983 from a position which is excepted from the rules of displacement and was reinstated on June 2, 1983 for reasons independent of Burlington-Northern's denial of Mr. Wood's grievance; in a matter that has a very reasonable likelihood of recurrence,

G. W. WOOD PETITIONS the National Railroad Adjustment Board for an opinion and a declaration of this claimant's rights under the Agreement between Burlington-Northern, Inc. and the Craft and Class of Employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees upon the PARTICULAR QUESTIONS:

Can a permanent position--excepted from the rules of displacement--be displaced by a former employe .

- a. who resigned the position due to disability and received a disability annuity?
- b. who owned and operated a motel in pursuit of a new career subsequent to his retirement due to disability?

Petitioner waives oral hearing and submits this claim upon brief alone."

OPINION OF BOARD: In this dispute Claimant seeks an interpretative decision with respect to his rights under the Controlling Agreement. He argues that he was wrongfully displaced on March 24, 1983, from Position No. 3 in Carrier's Communication Control System located at Springfield, Missouri. In effect, he contends that a former employe, who in this instance previously occupied a permanent position that was exempted from the rules of displacement, improperly displaced him via a displacement chain impact on the aforesaid date. He asserts that permitting this displacement to occur in this fashion violated the Controlling Agreement since the person had effectively resigned on September 8, 1979, for reasons of disability, and thereafter owned and operated a motel. The other employe occupied the position of Wire Chief Network Supervisor at the time of his resignation.

Carrier contends that when the other employe resigned from his position, he did not relinquish seniority and other employment rights. It avers that he only resigned from the Wire Chief Network Supervisor Relief Position and, as such, he was carried on the Seniority Roster during his entire time of disability. It argues that upon recovery from his disability he was permitted to return to service under the provisions of Rule 24, and possessing greater seniority, he displaced on Relief Position No. 1. The incumbent of this position displaced him on Position No. 3.

In addition, Carrier maintains that the instant petition is procedurally defective since it was not handled on the property pursuant to Section 153 First (i) of the Railway Labor Act, 1934, as Amended. Specifically, it asserts that failure to hold the customary on situs discussion conference bars an appeal to the National Railroad Adjustment Board. It cited several Third Division rulings to support its position. (See Third Division Award Nos. 23448, 23023, 22646, 22629 and 22311 et al.)

In our view of this case, we concur with Carrier's procedural position. Consistent with the decisional holdings of the Board, a discussion conference is an indispensable part of the claim handling procedure, and we have considered this requirement to be a mandatory dispute settlement step. Numerous Awards of this Division have held that it lacks jurisdiction where a claim has not been handled in the usual manner in accordance with the applicable provisions of the Railway Labor Act. In particular Section 2, Second, which requires that a conference be held on all disputes, and Section 153 First (i) which requires that grievances be handled in the usual manner up to and including the Chief Operating Officer, are clear and supportive statutory authority. In predecessor cases where a Claimant failed to request a conference prior to the submittal of a claim to the Board, we held this procedural omission to be a fatal flaw and dismissed the claim. We cannot deviate from this judicial standard nor read into the law a flexible and variant interpretation. The claim herein was not conferenced on the property prior to its appeal to the Board, and it is without standing. In Third Division Award No. 22646, we stated in part that:

"The absence of an on-property conference in this case is a fatal flaw and is sufficient justification for dismissal."

This decision is on point herein and the claim is dismissed.

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 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 claim is barred.

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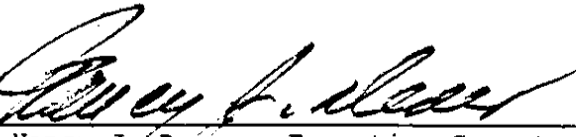
Page 3

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.