

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25479
Docket Number CL-25146

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9739) that:

1) Carrier violated the Clerks' Rules Agreement when Mr. V. W. Merritt, Assistant Vice President-Labor Relations, failed to properly decline claim filed by Employee M. E. Meyers, within sixty (60) days from the date filed.

2) Carrier shall be required to allow this claim for separation as presented.

OPINION OF BOARD: At the time this dispute arose, Claimant, M. E. Meyers, was the regularly assigned occupant of Agent Position No. 20150 at Savanna, Illinois in Seniority District No. 3. On November 16, 1981, Carrier abolished this position.

By letter dated November 17, 1981, Claimant elected to displace at Sabula Bridge on Position No. 21200. However, Carrier advised Claimant that he could not displace on this position.

On November 23, 1981, Claimant attempted to qualify at Savanna Tower. Carrier disqualified Claimant from this position as well.

On that same date, Claimant advised Carrier, via letter, that he elected to separate under Appendix 8, Article VI of the Agreement. Carrier denied Claimant's request for separation on November 27, 1981.

Accordingly, under date of December 1, 1981, Claimant advised Carrier that he had placed himself on pension and that he was terminating his employment as of November 30, 1981.

By letter dated, January 27, 1982, General Chairman J. R. McPherson informed Assistant Vice-President-Labor Relations V. W. Merritt that, in the Organization's view, Carrier had failed to properly decline Claimant's claim for separation, dated November 23, 1981. On March 10, 1982, Assistant Vice-President Merritt responded to the Organization's letter. He maintained that no claim had been properly filed on behalf of the Claimant. Thereafter, the matter was properly handled on the property. It is now before this Board for adjudication.

The Organization asserts that the separation letter of November 23, 1981, is a claim within the meaning of Rule 36(a) of the Agreement. In the Organization's view, that letter sets forth Claimant's desire to be separated from service. It relates to the rights of employees when positions are abolished in accordance with Appendix No. 8, Article IV. It specifically names the Claimant. Thus, the Organization reasons that the separation letter contains all the requisites of a claim pursuant to Rule 36(a) and the Railway Labor Act. Since Carrier did not deny that claim within sixty days, the Organization concludes that the claim should be sustained as presented.

Carrier, on the other hand, argues that the letter of November 23, 1981, is not a "claim" as that term is generally used. According to Carrier, that letter does not set forth any dispute or controversy between Claimant and itself. Therefore, Carrier maintains that no claim was filed on behalf of the Claimant. As such, it asks that the claim be rejected.

After reviewing the record evidence, we are convinced that the claim must fail. This is so for a number of reasons. First, Claimant's letter of November 23, 1981, simply is not a claim within the meaning of the Railway Labor Act. That is, it does not indicate the nature of the controversy or dispute that exists between Carrier and Claimant. Nor does it allege what portions of the Agreement were violated. Instead, the letter merely advises Carrier that Claimant is opting for separation under the appropriate Agreement. As such, this notice cannot be construed as a claim.

Second, the Awards cited by the Organization are not relevant to this dispute. For example, this Board's Award No. 22059 does relate to Claimant's right to a separation allowance. However, nothing in that case concerns the appropriateness of the claim itself. Here, the letter filed by Claimant does not meet the requisites of a claim. No such issue is contained in Award No. 22059.

Similarly, our Award No. 11798 dealt with Carrier's failure to respond to a formal claim filed by the Organization in April 1958. No contention was made in that case that the Organization had not filed a proper claim.

Also, our Award No. 15070 concerned Carrier's failure to respond to an appropriate claim filed by the Organization. Thus, it is clear that these Awards do not address the issue of a proper claim.

By contrast, Second Division Award No. 9321, cited by Carrier, involves an alleged claim filed by the Organization. That Board, in citing Third Division Award No. 19766, noted:

"Before the time limits of Article V become applicable, the claim as presented must come within the terms 'claims or grievances' upon which Article V is premised."

No such claim has been represented in the instant dispute. Accordingly and for these reasons, the claim must be denied.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.