

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25676
Docket Number MS-25653

George S. Roukis, Referee

PARTIES TO DISPUTE: (A. Kenneth Prior III
(
(The Chesapeake and Ohio 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 covering an unadjusted dispute between me and the Chesapeake and Ohio Railway, Mi-Wi Transportation Company and The Brotherhood of Railway, Airline & Steamship Clerks involving a transfer agreement concerning employees in which I was discriminated against."

OPINION OF BOARD: By letter, dated August 23, 1983, Claimant apprised Carrier's Superintendent-General Agent that he would like to file a formal grievance since he believed he was discriminated against when he was precluded from exercising protective options. An identical letter was sent to the Superintendent-Agent of the Michigan-Wisconsin Transportation Company. It was Claimant's position that he was entitled to the protective benefits provided by the February 7, 1965 Stabilization Agreement. The Superintendent-General Agent declined the claim on October 25, 1983 and by letter, dated December 1, 1983, Claimant served notice with the Executive Secretary of the Third Division that he intended to file an Ex Parte Submission with the National Railroad Adjustment Board.

In considering this petition, the Board takes judicial notice that the claim was not handled in the usual manner on the property. Specifically, it was not progressed and conferenced in accordance with the explicit procedural requirements of Section 3, First (i) of the Railway Labor Act of 1934, as amended, and Circular No. 1 of this Board. In view of this major defect, the Board of judicial necessity and consistent with its past decisional holdings must dismiss the claim for want of jurisdiction. (See Third Division Award Nos. 21893, 18107, 20977.)

In a similar vein, notwithstanding the aforesaid assessment, the Board notes that both the Carrier and the Organization agree that he was not covered by the provisions of the February 7, 1965 Stabilization Agreement. Pursuant to the June 16, 1983 Memorandum Agreement between Carrier and the Brotherhood of Railway, Airline and Steamship Employees, only employees protected under the February 7, 1965 Stabilization Agreement were permitted to exercise the available protective benefits. Accordingly, even assuming

arguendo that the claim was procedurally proper, the Board would be confronted with the unassailable fact that the signatory parties were in agreement with the interpretation and application of the 1965 Stabilization Agreement. As we carefully observed in Third Division Award No. 24382, we are not inclined to question the validity of an agreement where individual employees are not in consonance with the interpretative view held by the principal signatories. This position was also upheld by other Divisions of the National Railroad Adjustment Board. In Fourth Division Award No. 3945 covering an essentially similar conceptual issue, the Board held in pertinent part:

"Moreover, even if we were above to avoid the jurisdictional and procedural irregularities and could consider the merits, it would appear the signatories to the Agreement have concurred that Claimants' interpretation is erroneous, consequently, we would have to deny the claim in any event. See Awards 3709 and 3301."

Importantly, in this instance, the claim before us is defective and thus, we must dismiss it.

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 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:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 28th day of October 1985.