NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25807

THIRD DIVISION

Docket Number CL-25826

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Northeast Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9902) that:

Claim No. 1

Arthur W. Travis shall be allowed payment of $2,174.68 for the month of January, 1983, as a dismissal allowance, account having his position abolished as a result of action taken by the Regional Transportation Authority.

Claim No. 2

Arthur W. Travis shall be allowed payment of $2,174.68 for the month of February, 1983, as a dismissal allowance account having his position abolished as a result of action taken by the Regional Transportation Authority.

Claim No. 3

Arthur W. Travis shall be allowed payment of $2,174.68 for the month of March, 1983, and each month thereafter until he is recalled to service as a dismissal allowance, account having his position abolished as a result of action taken by the Regional Transportation Authority."

OPINION OF BOARD: The Claimant was formerly employed by the Chicago, Rock Island and Pacific Railroad Company (CRIP). Upon the bankruptcy of CRIP, the Claimant was employed by the Carrier, which became the successor company to CRIP on November 23, 1982, with respect to CRIP's suburban commuter line.

In the fall of 1981, the Trustee of the Rock Island estate ordered the demolition of LaSalle Street Station, where the Claimant, along with other employees, was headquartered. The Claimant's job was transferred to the Blue Island Engineering Department on October 1, 1981. On March 1, 1982, the Claimant's job title was changed from Maintenance Steno Clerk to Material Inventory Clerk. In December 1982, the Claimant was notified that at the completion of his tour of duty on December 31, 1982, his position was abolished. With the filing of the instant claim, the Claimant seeks protection allowance for every month thereafter until he is recalled to service.

The instant claim arises from the June 3, 1977 Agreement between the parties. Section II of the Agreement provides, in relevant part, that any dispute or controversy "concerning the protection afforded by this agreement * * * may be referred by either party to the Special Board of Adjustment * * *." After carefully reviewing the record, it is the Board's judgment that the dispute between the parties involved protection afforded by the June 3, 1977 Agreement. Accordingly, as this Board declared in Third Division Award No. 17988:

> "We agree with prior Awards of the Board to the effect that procedures established and accepted by the parties themselves for resolving disputes should be respected".

See also Third Division Awards Nos. 21706, 22093, 20982 and 19723.

In support of its position that the Board has jurisdiction of the instant dispute, the Organization refers to Third Division Award No. 5259. This Award dealt with a reconsideration of a Claim that had been dismissed under Award No. 4793 because of the objection by the Carrier that it had not been handled with the Committee set up under the Vacation Agreement of December 17, 1941. In Award No. 4793 this Board refused jurisdiction of the Claim. However, in Award No. 5259 the Carrier withdrew its objection and "both parties" requested that this Board "reconsider the case on the previous record, the Vacation Committee having ceased functioning". (Emphasis added). Since both parties requested this Board to reconsider the case on the previous record, Award No. 5259 is to be distinguished from the facts of the instant case.

Furthermore, Award No. 5259 does not indicate that this Board assumed jurisdiction of the Claim submitted because the Vacation Committee ceased functioning. This Board in Award No. 5259 took jurisdiction to resolve the Claim on its merits because the Carrier withdrew its objection to the failure by the Organization to have the Claim handled by the Committee and because "both parties * * * requested that [that Board] reconsider the case on the previous record * * *." It is sufficient to state that unlike Award No. 5259 the Carrier in this case has objected to the Board having jurisdiction to resolve the Claim on its merits.

It may very well be that as the Organization contends, the Special Adjustment Board has never been established. However, consistent with the long line of decisions by this Board, the parties are required to respect the procedures established under the Agreement for the settlement of disputes arising thereunder. See Third Division Award No. 17988.

The Organization contends that the language of Section II indicating that "any dispute or controversy * * * may be referred by either party to the Special Board of Adjustment" is permissive rather than mandatory. This Board has adequately addressed this argument in Award No. 21706:

> "We do not agree with the Organiztion's interpretation of the meaning of the word 'may' as used above. It is quite clear that the parties did not contemplate the selection of alternate forums for the resolution of disputes coming under the Protective Agreement, since no alternatives were specified; rather, the word 'may' was used, as we see it, to give the Petitioner the choice between arbitration or abandonment of the claim (c.f. the Eighth Circuit Court of Appeals, Bennet v. Congress of Independent Unions, Local #14, 331, F. 2d 355, 359,56). Although a number of Awards of this Board have held that such language did provide an election of forums (such as Award 19859), a substantial number of awards held precisely the opposite. We think the latter series of awards present the better reasoned approach; they include Awards 19281, 19723, 20982, 19295, 18602, 18925 and a host of others. *It is our* conclusion that the procedure established by the parties themselves for resolving disputes under the Merger Protective Agreement must be respected (Award 17988). Accordingly, the Claim must be dismissed."

In light of the aforementioned considerations, the Board concludes that the instant claim must be 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 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this *12th day of December 1985.*