

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26464
Docket Number MS-26223

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Robert D. Montoya
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Discrimination, fraud, corruption, interference, influence, coercion. Interpretation, Meaning, and application of the agreements. Refer to petition-submission a.k.a. U-1617 (first division). I ask the boards pardon in submitting everything at once, in that, I did not receive the instructions until this late date, that is; the board has had 'knowledge of' this dispute for 85 days. Instructions A.(1)."

OPINION OF BOARD: The record shows that Claimant was employed by the Carrier as a Locomotive Engineer and his last service with the Carrier prior to dismissal was as Locomotive Engineer. The Carrier states that Claimant's entire service career was as an employe in train and engine service. Claimant was dismissed on August 8, 1983, for his actions while employed as Locomotive Engineer on July 27, 1983.

Section 153 First (h) of the Railway Labor Act, as amended, specifically defines the jurisdiction of the four separate Divisions comprising the National Railroad Adjustment Board. Disputes involving Locomotive Engineers are not within the jurisdiction of the Third Division. The Division may not properly extend its jurisdiction beyond what is provided by law. The dispute involving Claimant's dismissal from Carrier's service as a Locomotive Engineer must be dismissed by the Third Division. Claimant's insertion of the words "Brotherhood of Maintenance of Way" in notice to this Board dated January 23, 1985, does not change or modify the jurisdiction of the Third Division. He was not a Maintenance of Way employe at the time of dismissal.

Our attention has also been directed that Claimant's disputes with the Carrier involving his dismissal as a Locomotive Engineer on August 8, 1983, for his actions as a Locomotive Engineer on July 27, 1983, have been adjudicated by the First Division of the National Railroad Adjustment Board in Awards Nos. 23821 and 23822, both dated May 12, 1987.

This Division has stated on numerous occasions that we do not consider it the intent of the Railway Labor Act, which has as one of its primary purposes the prompt and orderly settlement of disputes growing out of grievances or out of the interpretation or application of Agreements covering rates of pay or working conditions, that the National Railroad Adjustment Board repeatedly adjudicate the same dispute between the same parties and arising out of the same occurrence. (Third Division Award Nos. 25261, 24789, 23077, among others.) Claimant's dispute with the Carrier arising out of his dismissal on August 8, 1983, has been adjudicated by Award Nos. 23821 and 23822 of the First Division.

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 does not have jurisdiction over the dispute involved herein; and

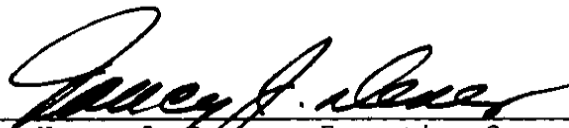
That the Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.