

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Sharon Marz  
PARTIES TO DISPUTE: (  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"This is to serve notice as required by the rules of National RR adjustment Board, of my intention to file an ex parte submission covering an unadjusted dispute between me and the Burlington Northern and BRAC union lodges 1310 and 593 involving the question.

Unfair treatment given to me in this force move from Dist 3 to Dist 2 in Oct 22, 1985.

Special treatment given to Pam Henderson Emp #3016078 and Frank Delgado Emp #3018819, I claim that Tom Wilcox did not give me the opposition to use Article IV Section 1(B). He was asked about disqualify me for health reasons but his answer was 'I will check.' Nothing happen except you can't disqualify yourself. Lois O'Toole was standing there and she asked him if there was a way.

I also claim that Northtown is in violation of rule 13 to fill these GREB positions I am forced to take, the superintendent office extra list was change to a GREB in Oct of 85, which in that seniority district.

I am claiming that the BN and union is discriminating against me because rule 19A does not apply to me nor rule 14A. There are 49 names junior to me on the St Paul GOB January of 85 seniority list, where are they?

The company and union is also discriminating against me by making a buy off of 35000 dollars to those in the St Paul GOB and not those whose home district is St Paul GOB, and was forced to take the Northtown GREB positions on Oct 21, 1985.

The union and company did not allow me to use the rule article IV section 1(B) in Oct of 85 and forced me to take the GREB position and because I can't handle this position I am on a 90 day medical leave.

I have not gotten a letter from William but I am sending in my grievance under 30 day notice rule."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

A careful review of the instant case requires the Board to dismiss this claim for procedural defects. Our jurisdiction is limited by the requirements set forth by Section 3, First (1) of the Railway Labor Act, as amended, and Circular No. 1 of the National Railroad Adjustment Board. This Board may only decide such cases as were presented on the property in the "usual manner" within the prevailing Rules of Agreements.

In the instant case a review of the record indicates that there is no correspondence between the Organization and the Carrier. The instant dispute is between the Claimant and the Organization for which this Board lacks jurisdiction.

Even if arguendo, the Claim were properly before this Board, which it most assuredly is not, it lacks merit. Under the provisions of Appendix A, Article IV, Section 1(b) available positions had to be offered in seniority order and that was clearly done. Claimant did not have to accept the position on the first go around. If all positions were accepted, she could avoid those positions and still retain protective benefits. However, if, as here, all positions were not accepted by senior employees for whatever reason, the Rule required acceptance "in reverse order of seniority" which now included her. Although one employee below her was not offered, the record clearly shows that employee did not speak English and was not fit for the position. Claimant's anguish is clear and the grievance sincere, but the Board's review indicates no violation of rights whatsoever.

Due to the fact that this Claim was not presented on the property, appealed to the appropriate Carrier officials, nor was a conference held relative thereto, the Claim is dismissed on procedural grounds.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer, Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.