

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

PARTIES TO DISPUTE: (R. Mark Southard
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(Chicago & Western Indiana Railroad Company

STATEMENT OF CLAIM:

"Claim for compensation due R. Mark Southard as a protected employee placed in a worse position with respect to compensation in violation of Article I, Section 1 and Article IV, Sections 1 and 2, of the Mediation Agreement of February 7, 1965 between the Chicago & Western Indiana Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, as amended by Memorandum of Agreement dated July 2, 1979."

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 were given due notice of hearing thereon.

Claimant was employed by the Carrier on August 16, 1978. On June 30, 1983, he went on the Extra Board and on June 5, 1984, he was furloughed and waived his right to return to service for positions of less than 30 days. He cancelled this waiver on November 5, 1985. On May 9, 1986, the General Chairman filed Claim on behalf of Claimant. On May 20, 1986, the General Chairman wrote Claimant as follows:

"This will confirm our recent telephone conversation at which time I advised that discussions were being held with the Chicago and Western Indiana Railroad Company which, if successful would lead to the recall, at least to an extra position, of all operators currently holding seniority. I also advised that one of the conditions set by Carrier would be the withdrawal of your claim in Case W-4605-T.

You indicated your concurrence in this arrangement. If this is still your desire, please so indicate by signing the enclosed copy of this letter in the space provided below and returning it to my office.

Because of certain aspects of these discussions, it is necessary that I act promptly; therefore, your immediate response is required."

On May 21, 1986, Claimant signed the letter under the portion of it which read:

"I agreed to the conditions set forth above: and in the event I am recalled I will withdraw my claim."

Claimant now contends he agreed "...that if he would be recalled to a regularly assigned position, he would release his Claim for compensation."

On July 7, 1986, the Organization and Carrier agreed to settle all outstanding Claims, including Claimant's.

On July 18, 1986, Claimant was sent notice to return to service for extra work. On July 23, 1986, he submitted a waiver of his right to return for less than 30 days, whereupon Carrier removed him from the seniority list and placed him out of service.

Thereafter, Claimant retained counsel who on September 18, 1986, wrote Carrier asserting that Claimant, as a protected employee under the 1965 National Agreement, was entitled to be retained in service. Counsel also contended Claimant had signed the May 20, 1986, letter with the understanding that:

"...if he would be recalled, not for a position on the extra board, but for a regularly assigned position he would release his claim for compensation. Insofar as Mark has never been recalled for a regularly assigned position, his claim known as Case Q-4605-T is still pending and awaiting decision."

Carrier responded the Claim had been withdrawn and the file closed.

Claimant alleges that as a protected employee he is entitled to preservation of employment and other benefits.

Carrier argues that proper procedures for processing disputes under the 1965 National Agreement were not followed. It further contends the Claim was not progressed in accordance with the Railway Labor Act and is not properly before the Division. Finally Carrier argues the Claim duplicates the Claim properly brought by, and settled with, the Organization.

We cannot accept Claimant's self-serving statement regarding his understanding of the May 20, 1986 letter which we find clear and unambiguous. We consider the matter settled and all other considerations aside, will deny the present Claim.

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 30th day of August 1988.