

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30565
Docket No. MS-30287
94-3-91-3-699

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Louis J. Aguilar
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between us and the Elgin, Joliet and Eastern System, involving the questions:

Please accept this as a Formal Time Claim and a continuous Time Claim on behalf of...Mr. Luis J. Aguilar, Gary Division Painter...for all time laid off starting Friday, February 1, 1991, due to the carrier being in violation of the controlling agreement.

Rule 41 states: ('When forces are reduced, the senior employees in each respective gang and/or group will be retained') and those affected either by being laid off or displaced will have the right to displace employees with less seniority in the same or in any lower rank in the seniority group in which employed. This rule would cover Group 3A Painter Foreman, Group 3B Shop Painter, and Group 3C Painter.

Therefore, we are requesting that...Mr. Aguilar be compensated for all time lost due to the carrier laying off said employees."

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 employee 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.

This dispute originated on February 1, 1991, when Carrier temporarily furloughed Claimant and numerous other employees in response to a decline in Carrier business. The Brotherhood of Maintenance of Way Employees subsequently filed a claim alleging violation of Rule 41. Rule 41 reads in pertinent part as follows:

"(a) When forces are reduced, the senior employees in each respective gang and/or group will be retained.... When an employee has seniority rights in more than one group, he may when affected by a force reduction exercise his seniority rights to enable him to hold the highest pay-rated position to which his seniority rights entitle him."

Carrier denied the claim, and it was then progressed in the usual manner, up to and including the highest Carrier officer authorized to handle such matters. Following the final declination, the Organization advised Carrier that it had turned the claim files over to the Claimant. Claimant then served notice on the Board of his intent to file an Ex Parte Submission relative to the instant dispute.

There is no evidence on the record before the Board that this Claim was the subject of a conference on the property as required by Section 3 First (i) of the Railway Labor Act. In Third Division Award 27482, this Board held as follows:

"Based on the Board's review of this case, we concur with Carrier's position that the Claim is procedurally defective and must be dismissed. Board precedent is clear that compliance with the procedural requirements of the Railway Labor Act for consideration of all Claims in conference on the property is a jurisdictional prerequisite for Board consideration of a Claim.

* * *

In the instant case, since no conference was ever held on the property, the Board is without authority to take jurisdiction of the Claim." (See, also, Third Division Awards 21627, 25761.)

The clear provisions of the Railway Labor Act are controlling with respect to procedure. Accordingly, the instant claim is dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

National Railroad Adjustment Board
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.