

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37312  
Docket No. MS-37369  
04-3-02-3-439

The Third Division consisted of the regular members and in addition Referee Joshua M. Javits when award was rendered.

(Terrence G. O'Brien  
PARTIES TO DISPUTE: (  
(Northeast Illinois Regional Commuter Railroad (Metra)

STATEMENT OF CLAIM:

"This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective March 12, 1999, of Terrence G. O'Brien v. Metra Electric intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between Terrence G. O'Brien v. Metra Electric."

"I would really like to see the proper justice to be served with this situation. I believe that I should be placed back to work with my same position and retaining my seniority and back pay due back to me."

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 were given due notice of hearing thereon.

The Claimant was formerly employed by the Carrier as a Gate Attendant until his dismissal on December 17, 2001. On November 8, 2001, the Claimant had an encounter with a customer of the Carrier, Ms. Arlene DeSousa, resulting in her filing a complaint with the Carrier. On November 9, 2001, the Claimant was charged with possible violation of: "Metra Employee Conduct Rules, Item II Paragraphs 2, 3 and 4; Item III, Rule B, Paragraph 1; Rule N, Paragraph 1, page 2, and Paragraph 3, Item 1, 2 and 6, and Paragraph 4; Customer and Station Services Bulletins dated February 1, 2001; Bulletin Notice No. 2, Paragraphs 1, and A and B; Item 6, Item No. 8, paragraph 1; and Customer and Station Services Bulletin No. 14, page 4, Paragraph 7."

A formal Investigation was held on December 11, 2001, before Hearing Officer R. J. Gaines. The Carrier dismissed the Claimant by notice dated December 17, 2001. The Claimant then filed an appeal with Special Board of Adjustment No. 1120, established by Agreement between the Transportation Communications International Union and the Carrier. Special Board of Adjustment No. 1120 rendered a denial Award involving the same facts as the instant claim.

At the threshold, the Carrier asserts that the matter before this Board must be dismissed because the denial Award by Special Board of Adjustment No. 1120 was final and binding. Paragraph 10 of the Agreement for Special Board of Adjustment No. 1120 states in relevant part "The awards shall be final and binding, subject to the provisions of Section 153, Second of the Railway Labor Act." That provision of the Railway Labor Act states, in relevant part "Such awards shall be final and binding upon both parties to the dispute . . . compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board." There is no manner of review established for an Award of a Special Board of Adjustment by this Board.

In his June 2, 2002 Notice of Intent, the Claimant acknowledged that he received a denial of his appeal by Special Board of Adjustment No. 1120, stating, "My local chairman . . . [a]ppealed this decision and it was denied by, [Referee] Charles Chamberlain on February 21, 2002." Because Special Board of Adjustment No. 1120 disposed of this matter, the Board has no jurisdiction to re-try the same

matter nor may the Board be used as a vehicle to challenge the initial Award. A carrier, labor organization, or an employee may not have a claim revisited by the National Railroad Adjustment Board, Public Law Board, or Special Board of Adjustment once a final Award has been rendered by one of them. See, Murray v. Consolidated Rail Corp., No. 83-3345 (6<sup>th</sup> Cir. 1984); Second Division Award 12148; Third Division Awards 22736 28550, 31988, 33948 and Fourth Division Award 1139.

Based on the foregoing, we have no alternative but to dismiss the claim.

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 21st day of December 2004.