

PUBLIC LAW BOARD NO. 2960

AWARD NO. 78

CASE NO. 43

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to accept Trackman G. D. Rock's rights retainer upon his return from an authorized leave of absence. (Organization File No. 4T-1750; Carrier File 81-3-231).
- (2) Claimant G. D. Rock shall be reinstated with seniority and all other rights unimpaired and compensated for all time worked by any junior employee that may have been recalled prior to his being permitted to return to service.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

Before any discussion of the merits can take place, the Board must first consider the Carrier's argument that this tribunal lacks jurisdiction to consider the claim. The Carrier contends that the claim before the Board has already been adjudicated by the Third Division of the National Railroad Adjustment Board.

A review of Third Division Award 24820 and the Carrier's submission in connection therewith convinces the Board that the facts and issues involved in this case are identical to those that were before the Third Division. They are indistinguishable. Both involved the Claimant's contention that his seniority was improperly terminated after he was furloughed in December 1980, and the Carrier's defense that the Claimant failed to timely file his rights retainer and that the time was not extended because the Claimant was not on leave of absence.

In view that the claim has already been adjudicated by another tribunal also deriving his jurisdiction from Section Three, First (i) of the Railway Labor Act, we have no jurisdiction. A similar question was considered by the Third Division. It was stated in Award 22736:

"In order to prevent chaos and multiplicity of appeals, the instant claim will be dismissed for the reason that the issue involved concerning claim here has been determined by Public Law Board No. 2203, which is a tribunal of coordinate jurisdiction with this Division and whose decisions are, likewise, final and binding under the Railway Labor Act. This claim now being moot is dismissed for lack of jurisdiction by this Division."

AWARD

In view of the foregoing, the Claim is dismissed.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. B. Crawford, Carrier Member

Dated: 2/22/85