

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1

Award No. 24200
Docket No. R43796
93-1-91-1-N-2216

The First Division consisted of the regular members and in addition Referee Elliott H. Goldstein when Award was rendered.

PARTIES TO DISPUTE: (John D. Peters
(
(The New York, Susquehanna and
(Western Railway Corporation

STATEMENT OF CLAIM:

"Claim in question is should Engineer John D. Peters be restored to service with all seniority, pay for time lost, including medical benefits, pay for requalifying, and Railroad Retirement Benefits and Credits from January 18, 1989 until February 27, 1990, the date the N.Y. S. & W. ceased as the designated operator of the D. & H. Railway.

The particular question on which an award is desired is did the New York, Susquehanna & Western Railroad Act in accordance with established seniority and all applicable agreements in not allowing Engineer Peters to perform service for the carrier."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

This is one of a series of claims by the Claimant on his own behalf, alleging in this instance that Carrier failed to act in accordance with established seniority provisions under all applicable agreements. As a remedy, Claimant seeks reinstatement and all benefits, including seniority and backpay restored from January 18, 1989, until February 27, 1990, the date Carrier ceased as the designated operator of the Delaware & Hudson Railway (D&H).

On June 20, 1988, the D&H filed a bankruptcy petition in the Federal District Court for the District of Delaware, and notified the Interstate Commerce Commission (ICC) of its intent to cease operations. By Directed Service Order No. 1504 dated June 22, 1988, the ICC authorized Carrier to provide directed service over the lines of the D&H. The directed service continued until February 13, 1989. During this period, the existing D&H collective bargaining agreements remained in effect.

Effective February 14, 1989, Carrier provided emergency service rail transportation over D&H lines pursuant to Commission Service Order No. 1506. On June 13, 1989, Carrier and the Brotherhood of Locomotive Engineers (BLE) entered into a new collective bargaining agreement concerning rates of pay, rules and working conditions. This agreement remained in effect when the D&H Bankruptcy Trustee resumed operations. The Trustee commenced operating the railroad under the terms and conditions of the June 13, 1989 collective bargaining agreement between the BLE and the Carrier.

The Trustee's operation of the railroad continued until July 31, 1990. Effective August 1, 1990, ICC authorized the D&H Corporation to operate the railroad under directed service. This operation continued until January 18, 1991, when the D&H Corporation purchased the railroad.

In January of 1989, the BLE requested a conference with the Carrier to discuss Claimant's seniority status. Pursuant to the conference held on February 8, 1989, it was agreed that Claimant was properly on the D&H roster as an engineer.

On October 2, 1990, Claimant submitted a roster protest, claiming that he was entitled to seniority standing on the D&H Engineer's roster posted August 1, 1990. He claimed that he performed services on the D&H as a locomotive engineer under the BLE contract from May 17, 1988, until January 18, 1989, when furloughed because of a reduction in force.

At some unspecified point thereafter, Claimant received a letter from the BLE General Chairman, which stated that, subsequent to the February 8, 1989 agreement between the parties to place Claimant on the D&H engineer roster, it was discovered that some of the information that had been furnished by Claimant was incomplete or inaccurate. Accordingly, Carrier refused to place Claimant's name on the seniority roster. The BLE General Chairman agreed that, under the circumstances, Claimant's roster protest lacked merit and the Organization declined to process the claim further on Claimant's behalf.

During the same period of time, Claimant apparently submitted his claim to the United Transportation Union (UTU) for further handling. After investigating the matter and upon receipt of a letter dated December 21, 1989, from the Carrier advising that Claimant had not accumulated seniority on the D&H roster, the UTU Local Chairman signed an agreement on October 24, 1990, with Carrier, agreeing to withdraw all claims against Carrier regarding the issue of Claimant's seniority. 1/

Claimant continued to pursue the matter of his roster protest and on May 16, 1991, received a letter from Carrier reiterating Carrier's position that there was no documented information that Claimant entered service and accrued seniority with the D&H as he claimed. Carrier in that letter suggested that an on-property conference be held prior to submission of the dispute to this Board.

After Claimant filed this dispute with the Board on May 6, 1991, conference ultimately was held on July 15, 1991. In addition to the instant claim against the Carrier, Claimant also filed claims based on this same series of events against the D&H Railway and the D&H Corporation.

1/ It is noted that time claims filed by Claimant for "a day at the applicable engineer's rate of pay on account of being deprived of his seniority as a D&H engineer" were appealed to the first level by the UTU for the periods May 1, 1990, through May 31, 1990; June 1, 1990, through August 31, 1990; September 1, 1990, through September 30, 1990 and October 1, 1990, through October 31, 1990. While we do not perceive that these claims are presently before this Board for adjudication, it is clear that they could not be considered in any event as they were not appealed to the highest Carrier officer designated to handle such claims.

With that as factual background for the somewhat complicated procedural history of the instant case, it is the Board's determination that it lacks jurisdiction to reach the merits of the dispute.

It is noted that there is no record on the property that Claimant submitted a roster appeal to the Area Manager designated to receive such appeals at Step One of the grievance procedure in accordance with Article 25.1 of the collective bargaining agreement. Claimant initiated his claim with the General Manager, the Carrier's highest designated officer. In addition, there was no conference held prior to the Submission by the Claimant of this dispute to this Board. Accordingly, we must find that the claim was not handled on the property as provided by the collective bargaining agreement and Section 3, First (i) of the Railway Labor Act which requires the parties to handle the dispute in "the usual manner" up to and including the chief operating officer of the carrier designated to handle such disputes.

Since the claim is procedurally defective, it must be dismissed. Moreover, even if this claim were properly before the Board, it would have to be denied, since Claimant failed to offer sufficient probative evidence that he was entitled to seniority standing on the D&H engineers' roster.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1993.