

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22645
Docket Number MS-22693

John J. Mangan, Referee

PARTIES TO DISPUTE: (Richard Shadwick
(
(Port Authority Trans-Hudson Corporation

STATEMENT OF CLAIM: "Whether P.A.T.H. violated the I.B.T.-P.A.T.H. Agreement, by denying me regular employment status."

OPINION OF BOARD: Claimant, while working as a Motor-Switchman in Carrier's service sustained a disabling injury on November 17, 1971. Because of the injury he was unable to continue in service as a Motor-Switchman and an accommodation was entered into in July, 1973, whereby claimant was provided employment as an Extra Assignment Clerk. He continued in such employment until some unsuspected date in 1978 when his employment relationship with Carrier was terminated.

However, prior to this termination, claimant on February 10, 1978 initiated a "claim" in which he stated:

"I am claiming regular employment status, due to the fact that I have worked continuously for a period of over 15 months and since June of 1977, due to the death of an employee, I did in fact hold down a regular job."

Carrier rejected this request in March, 1978, and the dispute as set forth in the Statement of Claim supra ensued.

Under date of November 12, 1978, the United States District Court, Southern District of New York entered an ORDER OF SETTLEMENT involving claimant in which the Court ordered - among other things:

"ORDERED, that plaintiff, Richard A. Shadwick, shall be deemed to have resigned from employment with Port Authority Trans-Hudson Corporation as of August 10, 1978 when said employment was terminated, and to have relinquished all employment rights and privileges of whatsoever kind with said Port Authority Trans-Hudson Corporation as of aforesaid date, and, it is further "ORDERED, that

"plaintiff, Richard A. Shadwick, shall be deemed to have forever released and discharged the defendant from all actions, causes of action, claims and demands for personal injuries sustained as a result of an accident on or about November 17, 1971 at the Henderson Street Yard, Jersey City, New Jersey as well as for any personal injuries plaintiff, Richard A. Shadwick, may have subsequently sustained from aforesaid date up to and including the date of plaintiff's termination of employment."

From a review of this record and after considering the presentations of all parties, we are left with only one conclusion; that is, that this claim must be dismissed.

The claim itself is vague, indefinite and imprecise. "Handling in the usual manner", as that term is used in the Railway Labor Act, requires proof of all essential facts while a claim is being progressed on the property. This record contains only contentions and assertions - neither of which qualify as proof.

In addition, we are faced here with a request to resolve an alleged dispute which is moot. As a result of the ORDER OF SETTLEMENT of the United States District Court in this case, there is nothing remaining for our Board to decide. This Board has consistently followed the Federal Court practice of refusing to make any determination on an issue which has become moot. For example, in Oil Workers Unions v. Missouri, 361 U.S. 363, 367-368 (1960) we find:

"Because that injunction has long since 'expired by its own terms,' we cannot escape the conclusion that there remain for this Court no 'actual matters in controversy essential to the decision of the particular case before it.' United States v. Alaska S.S.Co., 253 U.S. 113, 116. Whatever the practice in the courts of Missouri, the duty of this court 'is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue in the case before it.' Mills v. Green, 159 U.S. 651, 653. See Bus Employees v. Wisconsin

"Board, 340 U.S. 416. To express an opinion upon the merits of the appellant's contentions would be to ignore this basic limitation upon the duty and function of the Court, and to disregard principles of judicial administration long established and repeatedly followed."
(Emphasis added)

See also Award Nos. 20832, 22132 and 22177 of this Division.

Therefore, this claim will be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1979.