

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26006

Docket Number MS-26044

George S. Roukis, Referee

PARTIES TO DISPUTE: (James H. Westmoreland
(Southern Railway Company

STATEMENT OF CLAIM:

"This is to serve notice as required by the rules of the National Railroad Adjustment Board of my intention to file an ex parte submission on August 7, 1984 covering an unadjusted dispute between myself and Southern Railway System (a subsidiary of Norfolk, Southern Corporation).

Enclosed you will find the seniority list of employees with less service than myself, yet were promoted either with a pay-off or job transfer.

I was solely discriminated against in as much, or I was not allowed to exercise my seniority or receive stabilization pay which I was due as listed below:

April 1982	\$1,185.58
May 1982	1,131.69
June 1982	1,185.58
July 1982	1,185.58
August 1982	1,185.58
September 1982	1,269.86
October 1982	1,212.12
November 1982	1,269.84
December 1982	1,577.56
January 1983	1,964.35
February 1983	1,870.80
March 1983	2,151.42
April 1983	1,964.35
May 1983	2,057.88
June 1983	2,057.88
July 1983	1,403.10

Also enclosed is a Bid Application for six positions dated October 29, 1982, of which I was denied.

I have always been promoted to the lowest paying jobs since the beginning of my employment with the Freight Claim Department of Southern Railway. Also since that time, I have been continuously harassed by Mr. R. A. Helsley beginning December, 1977.

I feel that my Claim for Displacement Allowance should be paid. Your assistance in resolving this matter will be greatly appreciated."

OPINION OF BOARD: The basic facts in this case are as follows: By letter, dated August 6, 1984, Claimant notified the Executive Secretary of the Third Division that he intended to file an Ex Parte Submission on August 7, 1984 covering an unadjusted dispute between himself and Carrier. The Claim was filed on this date and Claimant set forth in detail the essentials of his grievance. Specifically, he contends that he was improperly furloughed from the Freight Claim Department of the Southern Railway Company, since he was precluded from exercising his seniority to displace junior employees. He also charges that he was unfairly treated and harassed by a Carrier Official. He seeks stabilization of pay for the period March 10, 1982 through July, 1983, under the November 1, 1980, amended Job Stabilization Agreement.

Carrier avers that his Claim is without merit since his protection under the aforesaid Agreement was justifiably suspended. In particular, it argues that Article 1, Section 2 of the Agreement provides Carrier the right to reduce the number of employees eligible for protection when business declines in excess of 5% in net revenue ton miles in any calendar month for the preceding two calendar years. It notes that net revenue ton miles decreased in April, 1982, and declines continued through July, 1983. It observes that it reduced the number of BRAC protected employees as allowed by Article 1, Section 2 on a point by point basis with the elimination of protection payments to the junior protected employees in various departments or seniority districts. Claimant was displaced and reverted to furlough status on March 9, 1982, and was one of the junior employees whose protection benefits were suspended. Article 1, Section 2 reads:

"In the event of a decline in the Carrier's business in excess of 5% in net revenue ton miles in any calendar month compared with the average of the same calendar month for the preceding two calendar years, the number of protected employees, excluding those whose protective status has been suspended, will be reduced to the extent said decline exceeds 5%. When the number of protected employees is reduced as provided for herein, the junior protected employees will not be entitled to protective benefits. Upon restoration of Carrier's business, employees entitled to protective benefits under this Agreement shall have such rights restored in accordance with the same formula within 15 calendar days."

Moreover, Carrier maintains that the Board lacks jurisdiction to consider the instant Claim, since Claimant failed to submit his grievance to Special Board of Adjustment No. 608 which was purposely established to adjust Claims arising under the November 1, 1980 Job Stabilization Agreement. It further argues that the Claim is procedurally without standing before the Board, since it was not properly handled on the property as required by Section 153, First (i) of the Railway Labor Act.

In considering this case, the Board concurs with Carrier's position that the Claim is procedurally defective. Firstly, we notice that the November 1, 1980 Job Stabilization Agreement contains dispute resolution procedures involving asserted differences over the interpretation or application of the Agreement. The substance of this Claim falls within the defining parameters of this Agreement. As a basic first step, Claimant should have initiated his Claim under the provisions of Article VII of this Agreement. Interpretation was more appropriate under that Agreement.

Secondly, the Claim is impaired since it was not properly handled on the property as required by Section 153, First (i) of the Railway Labor Act. Claimant argues that he was unfairly treated when junior employees were retained in service following his displacement on March 8, 1982. He also asserts that he was harassed. Close reading of the record, however, does not indicate that he utilized the grievance machinery of the May 1, 1973, Scheduled Agreement. Since an integral part of his petition relates to these asserted charges, he was obligated to use the procedures of Rules C-2 and C-3 of the Scheduled Agreement. As we stated in Third Division Award 19751, we are estopped from considering a Claim that was not properly handled on the property of the Carrier in accordance with the applicable terms of the Controlling Collective Agreement. Section 153, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board define our authority. Accordingly, and for the reasons aforesaid, we are compelled to dismiss the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1986.