

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (C. L. Wilson
(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM: "Claim of C. L. Wilson, an individual, that:

1. Carrier violated the agreement which it is party to with the Brotherhood of Railway and Airline Clerks when it arbitrarily and injudiciously assessed disciplinary penalty on September 11, 1984 of ten (10) days deferred suspension and six (6) months probation.

2. Carrier violated the agreement which it is party to with the Brotherhood of Railway and Airline Clerks when it arbitrarily and injudiciously assessed further disciplinary penalty on October 18, 1984, causing my actual suspension on October 20, 1984 for a period of thirty (30) working days plus ten (10) working days which were previously assessed September 11, 1984.

3. Carrier violated the agreement which it is party to with the Brotherhood of Railway and Airline Clerks, particularly Supplement No. 3 and Appendix No. 2, when I was refused my 1985 vacation and sick leave days because of the lack of qualifying days in 1984 caused by the forty (40) **days** suspension.

4. Carrier's action in suspending me from service **was unjust**, arbitrary, discriminatory and an abuse of their discretionary powers.

5. Carrier shall now be required to **expunge** the record of the **two (2)** investigations from my personal record and compensate me for forty (40) working days' wages lost account of Carrier's action.

6. Carrier shall now be required to reinstate my full 1985 vacation and sick leave and compensate me for all lost wages as a result of the sick leave refusal as well as the fifteen (15) days actual vacation time that I was refused."

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 employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Certain facts are undisputed. The Carrier operates a train-to-barge coal dumping facility, known as the Havana Coal Transfer Plant on the Illinois River at Havana, Illinois. The Claimant is employed at the Havana Coal Transfer Plant as a Pilot on the "Quiver," a small switching towboat involved in the barge loading operation.

In view of these facts this' Division is without jurisdiction to render a decision in this matter. This is because Section 153, First **(h)** of the Railway Labor Act allocates to the Fourth Division "... jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water...."

Various Divisions of this Board have been faced with such problems many times before and uniformly refused to accept jurisdiction over cases belonging elsewhere. Moreover, such issues can be raised at any time as stated in Fourth Division Award 2036:

"Jurisdictional issues may be raised at any stage of the proceedings. In Third Division Award 12223, the Board said:

'This Board exists by virtue of a Statutory Act, i.e., the Railway Labor Act. This Board may only accept jurisdiction of disputes and grievances which come within the provisions of that Act. Whether or not Respondent raised the jurisdictional question on the property is of no consequence. statutory jurisdictional matters may be raised at any stage of the proceedings.'

Section 3(h) of the Railway Labor Act defines, *in some particularity*, the jurisdiction of each of the four Divisions of the National Railroad Adjustment Board. The Employes are charged with the responsibility to know which of the Divisions of the Board has jurisdiction over a particular dispute. If it selects a Division which has no jurisdiction over its dispute, it must accept the consequences. Each of the Divisions is a separate jurisdictional entity."


In view of the foregoing, the claim must be dismissed.

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 30th day of **March** 1988.