

Referee Nicholas H. Zumas

PARTIES Norman C. Olson  
TO  
DISPUTE: Burlington Northern, Inc.

STATEMENT OF CLAIM: At the time of the merger of the Great Northern Railroad Company and the Burlington Northern Company, I was a rodman in the engineering department of the Great Northern Railway Company, which was a bid job with a seniority roster. A few months after the merger took place between the above-described railroad lines, approximately November of 1972, I was informed by my company that I was being transferred to Havre, Montana. I advised the Company that for personal and financial reasons I could not accept this transfer.

On May 3, 1973, I was advised that my job of rodman was abolished and I would be transferred to Havre, Montana, which I again advised them that I was unable to make this transfer and as of June 8, 1973, I was taken off the railroad.

Thereafter, I wrote the president of Burlington Northern, Mr. R. W. Downing, explaining the situation to him and I was placed back on the payroll but advised that I would have to make the transfer to Havre, Montana or being taken off the payroll as of August 15, 1973.

At the time of the demand transfer of myself as rodman, there were four (4) in my group, I had seniority over one of the rodman by ten (10) years, and yet the younger rodman was retained while my job was abolished.

OPINION OF BOARD: Petitioner, an exempt employe, filed the above-styled "Statement of Claim" with this Board on March 10, 1975. Prior to this time no claim had been initiated or progressed on the property, nor had any conference been held.

Because of personal reasons, Petitioner rejected Carrier's offer to transfer him from Seattle, Washington to Havre, Montana. On May 30, 1973 Petitioner was informed that his position at Seattle was being abolished and again was requested to transfer to Havre where he was needed. Petitioner wrote to Carrier's Vice President - Engineering on June 4, 1973 asking to be relieved of the transfer obligation. After his request was rejected Petitioner wrote to Carrier's President who gave him until August 15, 1973 to either transfer to Havre or seek employment elsewhere. Petitioner chose not to go to Havre and effective August 16, 1973 was furloughed. There is nothing in the record to indicate what if anything transpired between August 16, 1973 and March 10, 1975.

As indicated earlier, Petitioner was an exempted employe, that is, he did not come under any collective bargaining agreement between any "representative" (Section 1, Sixth, of the Railway Labor Act) and Carrier.

Even if this Board could overcome the hurdles of no handling on the property and timeliness, it is clear as a preliminary matter that the Board has no jurisdiction to consider this matter.

Numerous awards from all Divisions of this Board have consistently held that its jurisdiction under the Railway Labor Act is limited to the consideration of disputes" . . . growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions . . ." (Section 3, First (i) of the Railway Labor Act.)

In Fourth Division Award No. 2511, it was held:

"In order for this Board to hold that claimant's termination was improper it would be necessary to find that Carrier violated an enforceable limitation on its otherwise unrestricted right to terminate employees with or without cause. But there was no contractual limitation on Carrier's right to terminate claimant, since his employment was not covered by any agreement. Moreover, the Railway Labor Act, which is the source of the Board's authority, does not contain any restriction on Carrier's right to hire or discharge employees. The Board is without authority to establish such a restriction by its own independent action. The claim therefore must be dismissed."

Under the circumstances, this Board has no recourse but to dismiss the claim for lack of jurisdiction.

## FINDINGS:

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

The carrier and the 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute were granted the privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

Executive Secretary  
National Railroad Adjustment Board

By

  
Assistant Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1976