

Referee Eckehard Muessig

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Southern Railway Company

STATEMENT Claim and request of Railroad Yardmasters of America that:
OF CLAIM:

Lynchburg Yardmaster P. B. Ingram be paid \$7,267.32 representing benefits claimed by Mr. Ingram to the proper officer February 1, 1983 and no timely declination was given. The time limits of Rule 18(A) were violated.

OPINION The significant events relevant to this dispute began March 19,
OF BOARD: 1982 when the Interstate Commerce Commission (ICC) approved a request to coordinate the operations of the Southern Railway Company and the Norfolk and Western Railway Company. On June 1, 1982, the two Carriers consolidated their facilities and operations.

On June 3, 1982, in anticipation of increased business, the Carrier bulletined a relief Yardmaster position located at Lynchburg, Virginia. The Claimant, a regularly assigned Yard Foreman and extra Yardmaster at Raleigh, North Carolina, bid on the relief position and it was awarded to him on June 13, 1982.

Subsequently, the Carrier found it necessary to abolish the third shift Yardmaster position at Lynchburg on September 9, 1982 and the Claimant was displaced from his relief position by a more senior employee.

On November 27, 1982, the Claimant submitted a Carrier Form entitled "Request for Entitlement to Benefits". The stated purpose of the form was to assist in making determinations as to "whether the employee has been adversely affected by the merger, coordination or consolidation." The Claimant, in response to Item 1 on this form ("Identify agreement, under which compensation is due") cites the "New York Dock Agreement". In response to Item 5 on this same form, he explained how the coordination changed his work situation, following his assignment on June 13, 1982, and caused him to be adversely affected. It is the submission of this Form that triggered the matter before the Board.

Afterward, the Claimant resubmitted the Form and follow-up letters after the Carrier did not respond to the original request that was signed by him on November 27, 1982.

On April 8, 1983, the Carrier responded to the Claimant and denied his request for payment of claim that was initiated by him on November 27, 1982. The Carrier's denial essentially was based on its decision that the Claimant had not been adversely affected by the transaction of June 1, 1982.

There followed a further exchange of correspondence between the parties, resulting in the matter being placed before this Board.

The Carrier maintains that the claim here has emerged from a request for a benefit under a merger, to which the ICC applied New York Dock Conditions. Therefore, this instrument is controlling and the parties are constrained to follow its procedures, which contain an arbitration clause for the resolution of disputes arising therefrom. Accordingly, it contends that the Board lacks jurisdiction over this matter and must dismiss it on that basis.

For its part, the Organization, in its well-stated submissions and forceful arguments before the Board, essentially contends that, notwithstanding all of the various ramifications of the Claimant's dispute, the controlling issue here is the Carrier's failure to deny the Claimant's claim within sixty days, as provided by Rule 18(A) of the controlling agreement. Accordingly, it asserts that this is not a dispute involving the application of New York Dock Conditions as mandated by the ICC. The issue is the failure by the Carrier to disallow the claim within the time limits set by the agreement and, thus, this failure estops it from later denying the monies claimed.

The Board finds, under the facts and circumstances here, that it lacks jurisdiction. Leading to this conclusion, we particularly point to the Claimant's original submission to the Carrier, in which he described his claim for benefits as one arising from the New York Dock Condition. Moreover, the Claimant continued to acknowledge in later documents that this claim arose because he "was affected by this merger".

Accordingly, the record convincingly shows that the claim was presented as a demand for a benefit resulting from a merger to which the ICC had applied the New York Dock Condition. Therefore, the Board lacks jurisdiction.

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

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.

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July, 1985.