

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Award Number 4507

Referee Herbert L. Marx, Jr. Docket Number 4519

PARTIES David K. Butler and Bruce N. Buffett  
TO  
DISPUTE: New York, Susquehanna and Western Railway  
(Delaware Otsego System)

STATEMENT OF CLAIM: The petitioners, DAVID K. BUTLER and BRUCE N. BUFFETT allege that we were improperly and unfairly dismissed from our employment as Railroad Policemen. It is our position that we were performing our duties a (sic) such in accordance with applicable laws and policies in effect at the time of our dismissal. Additionally, we were conducting an investigation at the direction of the Chairman of the Board of Directors for the Corporation and we were terminated from employment because of our findings as a result of that investigation.

OPINION OF BOARD: David K. Butler was employed as Chief of Railroad Police from September 10, 1979, until January 21, 1984 and Bruce N. Buffett was employed as Police Officer from October 13, 1980, until January 21, 1984 by the Carrier. This dispute concerns their Claim of being "unfairly dismissed" by the Carrier.

Section 3, First (i) of the Railway Labor Act, as amended, limits the jurisdiction of the Board to disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." In this instance, there is no showing of any agreement covering the Claimants' employment.

The Claimants refer to the fact that, as Railroad Policemen, they are "governed by Section 88 of the New York Railroad Law" and that they hold Railroad Police Commissions in New York, New Jersey and Pennsylvania. The Board finds that such legal considerations do not in any manner serve as an "agreement" under the Railway Labor Act.

As a result, the Board determines that it is without jurisdiction to consider the Claim. Supportive of this position are numerous other Awards of this Division, including the following: 4410; 4205; 3248; and 2511. Award No. 2511, concerning an employee of a Carrier's Police Department, includes the following reasoning:

"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."

With this finding, it is unnecessary for the Board to examine further other procedural matters raised by the Carrier or to address the particular circumstances of the employees' termination of employment.

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 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.

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:



Nancy J. Bever  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1987.