

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN,
a division of the Rail Conference of the
International Brotherhood of Teamsters,

Petitioner,

v.

UNION PACIFIC RAILROAD CO.,

Respondent.

OPINION and ORDER

11-cv-162-bbc

BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN,
a division of the Rail Conference of the
International Brotherhood of Teamsters,

Petitioner,

v.

UNION PACIFIC RAILROAD CO.,

Respondent.

OPINION and ORDER

11-cv-484-bbc

In these consolidated cases, petitioner Brotherhood of Locomotive Engineers and

Trainmen seeks to enforce two arbitration awards issued by the National Railroad Adjustment Board under the Railway Labor Act. 45 U.S.C. § 153. The arbitrators ordered respondent Union Pacific Railroad Company to reinstate two terminated locomotive engineers with backpay. Respondent reinstated the engineers, but petitioner and respondent disagree about whether the collective bargaining agreement between the parties allows respondent to reduce its backpay liability by the amount of money the locomotive engineers earned through other employment between the time they were terminated and reinstated. Petitioner contends that respondent cannot offset its backpay liability and that it has failed to comply with the arbitration orders by refusing to pay the full amount of backpay owed to the reinstated locomotive engineers.

Now before the court are respondent's motions to dismiss the cases for lack of subject matter jurisdiction, which will be granted. Respondent contends correctly that petitioner's claims are subject to mandatory arbitration under the Railway Labor Act. These cases involve "minor disputes" committed exclusively to resolution by means of arbitration before a Railroad Adjustment Board. Therefore, this court lacks subject matter jurisdiction to hear petitioner's claims.

BACKGROUND

Petitioner Brotherhood of Locomotive Engineers and Trainmen is a national labor

organization that represents locomotive engineers employed by respondent Union Pacific Railroad Company. Petitioner and respondent are parties to a collective bargaining agreement that governs the rates of pay, rules and working conditions of locomotive engineers employed by respondent. The agreement includes a “System Agreement — Discipline Rule” that governs all discipline of locomotive engineers, including grievance procedures. The rule provides that

If, by operation of this agreement or as the result of an arbitration decision, the Carrier is required to pay an engineer who has been disciplined for ‘time lost,’ the amount due shall be based upon the average daily earnings of the engineer for the 12 month period (beginning with the first full month) prior to removal from service. The sum of the claimant’s earnings during such period shall be divided by 365 to arrive at the average daily earnings to be applied in determining the amount of lost wages, based on the number of days of discipline.

Petitioner and respondent have had a long-running dispute regarding the proper interpretation of the discipline rule as it relates to remedies available to terminated engineers who are reinstated by an arbitrator. Respondent believes that the discipline rule provides only for “make-whole” remedies and that it is entitled to offset an employee’s interim earnings if the employee is ordered to be reinstated by an arbitrator. Petitioner disagrees; it believes that the discipline rule forbids such offsets.

In 2005, respondent terminated locomotive engineer T.L. Pax after learning that he had pleaded guilty to a felony. Petitioner appealed the termination to respondent in

accordance with the collective bargaining agreement. Respondent denied the appeal and petitioner submitted the dispute to the National Railroad Adjustment Board for resolution. Following consideration of both parties' submissions and arguments, the adjustment board found that respondent's dismissal of Pax was not supported by just cause and ordered that he be reinstated "with seniority unimpaired and pay for time lost in accordance with the terms of the SYSTEM AGREEMENT – DISCIPLINE RULE — to the extent that he was available for work, excluding any period of incarceration." The adjustment board ordered respondent to comply with the award within 30 days. Respondent reinstated Pax to employment with back pay, but subtracted money from the award for "outside wages" that Pax earned while he was not working for respondent.

In 2007, respondent terminated locomotive engineer K.T. Burge for violating company rules. After respondent denied petitioner's appeal of the termination, petitioner submitted the dispute to the National Railroad Adjustment Board for resolution. The adjustment board found that the record was insufficient to establish Burge's guilt and ordered respondent to reinstate him with seniority and backpay in accordance with the terms of the System Agreement – Discipline Rule within 30 days. Respondent reinstated Burge but has not paid him any backpay on the ground that Burge has failed to provide information about wages he earned while not working for respondent.

OPINION

Congress created the Railway Labor Act to govern disputes between railroads and their employees and thus minimize disruption to commerce. 45 U.S.C. § 151a; Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246, 252 (1994). Petitioner filed the present petitions under 45 U.S.C. § 153, First (p), of the Railway Labor Act, which states that “[i]f a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file [a petition] in the District Court of the United States” to enforce the award. Petitioner contends that because it is seeking enforcement of the awards reinstating Pax and Burge, the court has jurisdiction over these cases.

However, the Railway Labor Act provides a mandatory and exclusive arbitral mechanism for “minor” disputes between rail companies and labor organizations representing their employees. Hawaiian Airlines, 512 U.S. at 248, 252–53; see also Rabe v. United Air Lines, Inc., 636 F.3d 866, 872 (7th Cir. 2011). For a minor dispute that cannot be resolved internally, Congress granted exclusive jurisdiction to adjudicate the matter to arbitrators to the National Railroad Adjustment Board or an adjustment board established by agreement between the railroad and a union. 45 U.S.C. §§ 152, Sixth, 153 First (i); Consolidated Rail Corp. v. Railway Labor Executives’ Association, 491 U.S. 299, 303-04 (1989).

“Minor” disputes are those growing “out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.” 45 U.S.C. § 151a; Hawaiian Airlines, 512 U.S. at 252–53. In other words, disputes that require interpretation of a collective bargaining agreement are “minor disputes.” Brown v. Illinois Central Railroad Co., 254 F.3d 654, 658 (7th Cir. 2001) (“A plaintiff’s claim is properly characterized as a minor dispute (and is therefore subject to mandatory and exclusive arbitration under the RLA) when the resolution of the plaintiff’s claim requires interpretation of the [collective bargaining agreement].”). See also Coker v. Trans World Airlines, Inc., 165 F.3d 579, 583 (7th Cir. 1999) (“The distinguishing feature of a minor dispute is that the dispute can be conclusively resolved by interpreting the existing [collective bargaining agreement].”) (citation and internal quotation omitted); Baylis v. Marriott Corp., 843 F.2d 658, 662 (2d Cir. 1988) (jurisdiction over dispute concerning “an interpretation of the terms of a collective bargaining contract . . . lies exclusively with the appropriate Adjustment Board”). Thus, district courts lack subject matter jurisdiction to decide the merits of disputes or to enforce arbitration awards that require interpretation arising out of a collective bargaining agreement between a railroad and its employees. Hawaiian Airlines, 512 U.S. at 252-53. As the Court of Appeals for the Seventh Circuit has explained, although courts are empowered to enforce adjustment board decisions, “the judicial duty to enforce an arbitration award [under the Railway Labor Act] is neither a duty nor a license to interpret

it.” Brotherhood of Maintenance of Way Employees v. Burlington Northern Railroad Co., 24 F.3d 937, 939 (7th Cir. 1994) (citation omitted).

Applying these principles to the present cases, I conclude that the court lacks jurisdiction over petitioner’s claims. The parties disagree about the meaning of the adjustment board’s decision that respondent must “pay for time lost in accordance with the terms of the” collective bargaining agreement’s discipline rule. In particular, the parties disagree whether the adjustment board’s decision allows respondent to offset its backpay liability with outside wages Pax and Burge earned between the time of their terminations and reinstatements. Because this issue requires an interpretation of the discipline rule in the underlying collective bargaining agreement, it is a “minor dispute” under the Railway Labor Act. Order of Railroad Conductors & Brakemen v. Erie Lackawanna Railroad Co., 302 F. Supp. 1196, 1200 (N.D. Ohio 1969) (concluding that award reinstating employee with payment for time lost was too vague to enforce and matter had to be remanded to arbitration board to resolve question whether outside earnings could be deducted from back pay); Brotherhood of Railroad Signalmen v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., 284 F. Supp. 401, 405 (N.D. Ill. 1968) (same).

Petitioner argues that interpretation of the underlying collective bargaining agreement is unnecessary because there is only one reasonable interpretation of the discipline rule. This argument is not persuasive. The adjustment board did not make it clear whether respondent

could offset its backpay liability with the wages Pax and Burge had earned while they were working elsewhere. Further, the discipline rule says nothing about whether respondent may subtract outside earnings from backpay awards, stating only that the backpay must be “*based on* the average daily earnings of the engineer for the 12 month period . . . prior to removal from service.” Thus, there is a genuine and non-frivolous dispute regarding the adjustment board’s decisions and the proper interpretation of the discipline rule.

Finally, petitioner devoted nearly seven pages of its ten-page opposition brief to its argument that respondent relied improperly on confidential information and statements by members of the adjustment board in support of its motion to dismiss. However, it was not necessary to consider the allegedly confidential documents and statements to determine that this case presents a “minor dispute” subject to mandatory arbitration. I needed to consider only the underlying collective bargaining agreement and the parties’ competing interpretations of the awards at issue to conclude that a non-frivolous disagreement about their meaning exists. Therefore, whether respondent cited confidential information in its motion to dismiss had no effect on my conclusion that the court lacks subject matter jurisdiction over petitioner’s claims.

ORDER

IT IS ORDERED that respondent Union Pacific Railroad Co.’s motion to dismiss,

dk. #17 in case number 11-cv-162-bbc and dk. #23 in case number 11-cv-484-bbc, is
GRANTED. The cases are DISMISSED for lack of subject matter jurisdiction.

Entered this 15th day of February, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge