

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

ELIZABETH E. NICHOLSON

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Petitioner, Elizabeth E. Nicholson, that:

(a) In December 1957 the Carrier violated the Collective Bargaining Agreement between the Erie Railroad Company and the Clerical, Office, Station and Storehouse Employees, represented by the Brotherhood of Railway Workers, in that it appointed another clerk, with considerably less seniority than Petitioner's to the position of Chief Clerk. Petitioner was qualified for such position. This was not only a breach but discriminatory by the Carrier.

(b) That Carrier abolished Petitioner's job as Clerk in December 1958 and pursuant to the terms of the existing Collective Bargaining Agreement Petitioner served notice that she was exercising her privilege of displacing the Chief Clerk, which she was entitled to do by reason of her seniority over the Chief Clerk. The Carrier refused to assign to her the position of Chief Clerk. This was not only a breach but discriminatory by the Carrier.

(c) That Petitioner is entitled to the difference in pay in her job as Clerk and the earnings of Chief Clerk from December 19, 1957, to December 5, 1958, plus loss of wages as chief clerk from December 5, 1958, and so long as such violation by the Carrier continues.

OPINION OF BOARD: As to claim (a) the record shows that the position of Chief Clerk in the Office of Division Car Foreman at Jersey City, New Jersey was advertised for applications on December 19th, 1957. Petitioner made application for the position but it was not awarded to her as Carrier considered her lacking in fitness and ability. Thereafter a claim was filed in her behalf by the Brotherhood of Railway and Steamship Clerks and denied by Carrier. Claim was thereafter appealed to Carrier's highest officer designated for handling of such matters on February 24th, 1958 and denied

by him on April 1st, 1958. The initial claim, the denial thereof, the appeal and denial on appeal were timely filed in accord with Paragraphs (a) and (b) of Rule 41 of the effective Agreement.

As to claim (b) the record shows that on December 3rd, 1958 Petitioner was duly notified that her position of Clerk was to be abolished effective December 5th, 1958. On December 4th, 1958 Petitioner informed Carrier that she desired to exercise her seniority rights and displace the incumbent of the position of Chief Clerk. Her request was denied by the Carrier on the basis that she was not qualified. Petitioner addressed letters to the Carrier's President on December 1, 4 and 9, 1958 and to Carrier's highest designated officer for handling of such matters on December 17th, 1958. That officer responded to all of Petitioner's communications on December 23rd, 1958 and reaffirmed prior decisions as to Petitioner lacking the necessary qualifications for the position of Chief Clerk.

On December 13th, 1963 Petitioner instituted proceedings appealing the claim to this Board — this being more than sixty-seven months after the denial of claim (a) on April 1st, 1958 and more than fifty-nine months after the denial of claim (b) on December 23rd, 1958. Paragraph (c) of Rule 41 of the effective Agreement provides:

"(c) The requirements outlined in Paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said Officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3, Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months period herein referred to."

The record contains no evidence that the parties agreed to an extension of the time limits stated in Paragraph (c) of Rule 41. Since proceedings were not instituted within 9 months from the date of decision by Carrier's highest designated officer to handle such disputes the claims are barred.

Petitioner contends that complaint was filed with this Board in August 1960. Petitioner further contends that the attempted filing in August 1960 was a valid filing within time. The final decision of Carrier in claim (a) was made on April 1, 1958, and in claim (b) was made on December 23, 1958. The attempted filing in August 1960 was more than 28 months after the final decision in claim (a) and more than 19 months after the final decision in claim (b).

In view of the foregoing the Board may not properly proceed to a consideration of the merits of this claim. It will be dismissed for failure to comply with the time limit requirements of Paragraph (c) of Rule 41 of the Agreement.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1964.