

Award No. 14697
Docket No. MS-15182

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

MARY GINLEY

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Mary Ginley, an employe of the Erie-Lackawanna Railroad for 35 years as a comptometer operator in Scranton, Pennsylvania, was suspended on a charge of insubordination on March 19, 1963 for failure to submit to a psychiatric examination by a Dr. Konopka in accordance with an alleged directive from Dr. W. E. Mishler dated February 19, 1963. The said directive from Dr. Mishler ordered Miss Ginley to report to a Dr. J. E. Swift for a physical examination. Miss Ginley submitted to the physical examination in accordance with the said directive, but thereafter, without any notice to her, she was arbitrarily requested to undergo the additional psychiatric examination without any reason as to the purpose thereof. Miss Ginley refused to submit to this additional examination until such time as she was given sufficient reason by the Railroad officials for such an unusual examination.

Miss Ginley has taken an appeal from the order of suspension, in accordance with the contract existing between the Railroad and the Brotherhood of Railway Clerks, to the highest Appellate Division in accordance with the said contract, being the Grand Executive Council. However, Miss Ginley's appeal was denied and the order of suspension still exists.

Miss Ginley herewith gives notice of her intention to file an ex parte submission within 30 days from the date hereof to your Honorable Board for the purpose of determining this dispute in accordance with your rules and regulations. A copy of this notice is being forwarded to the Erie-Lackawanna Railroad, office of the President, New York.

OPINION OF BOARD: The claim arises out of Claimant's suspension, without pay, for allegedly failing to complete a medical examination required by Carrier. Carrier moves for dismissal of the Claim on the grounds that it has not been handled on the property level in accordance with the requirements of Rule 41 of the controlling Agreement.

Rule 41 (a) in part provides as follows:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence

on which claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. . . ."

The record discloses that Claimant was suspended on April 4, 1963. Thereafter, the following events occurred prior to this Division's receipt of an ex parte submission on behalf of the Claimant on December 14, 1964.

On April 8, 1963 Claimant addressed a written request for assistance to the General Chairman of the BRC.

On April 10, 1963, the General Chairman of the BRC met with Carrier's representative concerning the dispute and apparently was satisfied with Carrier's explanation as no further affirmative action was thereafter taken on behalf of Claimant.

On June 6, 1963, the BRC System Board of Appeals Committee denied Claimant's appeal from the General Chairman's decision.

On February 13, 1964, Claimant's attorney addressed a letter to the Chairman of Carrier with reference to a request for reinstatement. However, the contents of said letter is not contained in the record before us.

On October 14, 1964, Claimant's attorney addressed a letter to this Division, stating his intention to file an ex parte submission.

None of the foregoing acts constitutes the presentation of a claim to the officer of the Carrier authorized to receive same as required by Rule 41 (a) of the controlling Agreement between Carrier and Claimant's duly authorized representative. Since the most essential requirement of the grievance procedure was ignored, no actual claim on behalf of Claimant was ever filed with Carrier. Section 3, First (i) of the Railway Labor Act expressly limits the jurisdiction of the National Railroad Adjustment Board to the consideration of disputes that have been "handled in the usual manner up to and including the Chief Operating Officer of the Carrier designated to handle such disputes." Carrier at no time waived these requirements and no valid basis for implying waiver has been established by Claimant.

Claimant also contends that the claim should be considered as a continuing violation under Rule 41 (e) of the controlling Agreement as the Claimant remains suspended from employment. Insofar as the jurisdiction of this Division is concerned, grievances cannot be initiated at the Board level and the requisite filing and appeals procedures must be followed. Therefore, we need not consider whether the instant claim would fall within the purview of Rule 41 (e) of the Agreement between the Carrier and Claimant's representative.

In view of the foregoing, we find that this Division is without jurisdiction to consider the case on the merits. Accordingly, we must dismiss the claim without prejudice.

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.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.