



Award No. 14808
Docket No. MS-16294

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

ARNOLD R. FITZGERALD

vs.

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: The question presented in this matter is whether the action of the respondent in requiring the petitioner to relinquish his position as Agent-Operator at Elkton, Virginia was a breach of its obligation to said petitioner under the contract then in existence between the petitioner's union, the Transportation-Communication Employees' Union, and said respondent; and whether the action of said respondent in then requiring said petitioner to undertake the position of Agent-Operator at Waynesboro, Virginia was not also a breach of said contract.

OPINION OF BOARD: The Claimant in this case challenges the action of Carrier in returning G. P. Rodgers to his former position of Agent-Operator at Elkton, Virginia, and the resultant return of Claimant Fitzgerald to his former position of Agent-Operator at Waynesboro.

The circumstances under which the Carrier's action was taken are fully set out in the submissions and need not be repeated.

At the outset the Carrier raises a number of procedural questions, only two of which need be dealt with here: (1) Failure of petitioner or his representative to notify Carrier officers of rejection of their decisions; and (2) *failure to handle the claim or grievance in conference with Carrier officers as provided by the Railway Labor Act.*

First: This Board has often held that agreement provisions identical to Rule 12, Section 1, (a), (b) and (c), of the controlling agreement in the instant case are mandatory and must be applied as written unless waived. Those provisions were not only not waived here, but were specifically pointed out to the claimant's representative by the Carrier's Senior Vice President. Petitioner also quotes pertinent portions of these very provisions in his *ex parte* submission, so he must have known that "Failing to comply with this provision the matter shall be considered closed. . . ."

Second: There is ample authority in numerous awards of this Board to sustain the Carrier's contention concerning failure of the petitioner to seek a conference with management representatives. This is particularly appropriate here where the record clearly shows that if such a conference had been held the duly authorized representative

of the employes of this Carrier comprising the collective bargaining unit for station, tower and telegraph service employes, would have attended with material which might have — and certainly should have — convinced the petitioner of his error.

We find that the claim was terminated when the petitioner failed to comply with requirements of Rule 12; and, further, that since no conference was held or sought in conformity with Section 2, First, Second and Sixth of the Railway Labor Act, the claim was not handled as provided by Section 3, First (i) of the Act.

For these reasons the claim will be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

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 29th day of September 1966.