

**Award No. 18338**  
**Docket No. MS-18678**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Paul C. Dugan, Referee**

**PARTIES TO DISPUTE:**

**J. J. MILESKY**

**PENN CENTRAL TRANSPORTATION COMPANY**

**STATEMENT OF CLAIM:** This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on January 17, 1970, covering an unadjusted dispute between me and the Penn Central Railroad involving the question:

That the Penn Central Railroad, by recalling me from the furlough list on March 13, 1968, assigning me to a position of Extra Clerk, and on March 15, 1968, giving me a notice stating that I was not qualified on any of the positions as clerk in the Movement Office, and, subsequently, removing my name from the roster, violated the following Rules of the Agreement Effective February 1, 1968, 1-B-1 (b), 2-A-5 (a), (b), (c) and (d), 3-C-1 (g) and 9-A-2 (b), and Sections 6 (a) and 12 of the Agreement of May, 1936, Washington, D. C. and Rules of Agreement of October 18, 1966, known as Attachment II, IV (a) 1 and VI (a), (b), (c) and (d).

Whereas, Rule 1-B-1 (b) defines "qualified employe" as having "sufficient fitness and ability" and in the application of Rule 3-C-1 (g) the Penn Central Railroad acknowledges this "sufficient fitness and ability," I desire to know why I was not given the position in the Movement Office. The fact that I have never worked in the Movement Office was known to the Penn Central Supervision. Also, I desire to know why the notice of disqualification included all positions in the Movement Office, when only one position was involved.

Under Rule 2-A-5 (a), I desire to know why this notice of disqualification was given to me within fifteen minutes of my reporting for the position. The rule states that an employe awarded a bulletined position or vacancy will be given thirty days to qualify.

Under Rule 2-A-5 (b), I desire to know how the supervision of the Penn Central Railroad, can, from asking the question, "Did you ever work here before?" ascertain that an employe will not qualify.

Under Rule 2-A-5 (c), I desire to know what conditions developed so that I could not perform the assigned work.

Under Rule 2-A-5 (d), I desire to know what cooperation was given in my effort to qualify.

Rule 9-A-2 (b) gives precedence to Attachment II over Rule 3-C-1 (g) and Rules IV (a) 1 and VI (a), (b), (c) and (d) state that all "utility employes" on the entire Penn Central Railroad are subject to recall to positions before "present employes."

Section 6 (a) of the Agreement of May, 1936, Washington, D. C. states that no employe is required to accept a lower salaried position and Section 12 of this agreement protects an employe from any rules that rearrange or adjust forces in anticipation of a coordination.

**OPINION OF BOARD:** It is clear from the record that the claim the Petitioner is attempting to assert before this Board was not handled on the property of the Carrier in accordance with the provisions of the applicable collective bargaining agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Therefore, the claim is barred from consideration by the Division and will be dismissed.

**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 Employe involved in this dispute are respectively Carrier and Employe 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 17th day of December 1970.