

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19571
Docket Number MS-19399

Clement P. Cull, Referee

(Kathleen H. Chaney

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: This **is** to serve notice as required by the rules of the National Railroad Adjustment Board of my intentions to file an **ex parte** submission on May 1, 1971 covering an unadjusted dispute between me and The Chesapeake and Ohio Railway involving the **question** of being denied the rights of the Clerks' Agreement, Rule 4, Rule 28, Rule 19, Rule 21, the **Washington Agreement** of May 1936 and any and all other rules, to exercise my seniority on Position A-22 being **held** by a junior **employee** on December 8, 1967.

OPINION OF BOARD: The grievance herein **was** progressed on the property by the Organization in the usual **manner** up to an including the highest **officer** of Carrier designated to handle such disputes. when the claim was denied by the highest officer on April 15, 1969, the Organization decided against appealing the matter to this **Board** as it agreed with Carrier that its action in refusing to allow claimant to "bump" position A-22 on **December** 4, 1967, was not violative of the agreement. The claimant when so informed by the Organization refused to accept the **decision** of the General **Chairman** not to go **forward**. Claimant thereupon appealed his decision within the **Union** first to the Appeals Committee of the Board of Adjustment, then to the International President and finally to the Grand Executive Council. The ruling of the Executive Council dated August '20, 1970 sustained the International President who had previously sustained the decision of the Appeals **Committee** not to go forward with the case. Prior to these appeals the Union explained to claimant its reasons for not carrying the case further. Meeting with no success within the Union claimant on April 1, 1971, filed with this Board a notice of **intention** to make an **ex parte** submission to this **Board**.

Thus, the Organization and the Carrier are in harmony with respect to the merits of the grievance. The Organization, while stating that the claim lacks merit, would waive the time limit rule in Rule 27½ and proceed to discuss the merits. The Carrier, however, insists that the time limit rule is jurisdictional and that this Board cannot consider the merits until the jurisdictional aspects of the case are disposed of.

Rule 27½ • Time Limits, reads, in relevant part, as follows:

"(c) 'The requirements outlined in Sections (a) and (b) of this rule pertaining to appeal by the employee 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 employee 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."

It is **clear** that Rule 27½ requires that matters to be within the jurisdiction of this Board must be brought to it **within** 9 months of the date of the denial by the highest designated officer unless there **has** been an extension of time requested and granted. The record is clear that the Notice of Intent herein was filed almost two years **after** the denial by the highest designated officer. The record shows no evidence of any **extension** being requested or granted. Nor has it been **shown** that the time limit in Rule 27½(c) is extended while a claimant exhausts her **remedies** within the Union.

As the matter was not progressed to this **Board** in accordance with the requirements of Rule 27½(c) and as Carrier has not waived the application of said rule we must find that the claim is **untimely** filed with this Board and we are barred by the rule from considering it. **Having** so found we shall dismiss the claim.

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 **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 in accordance with the Opinion.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *E. L. Killen*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.