

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19620  
Docket Number MS-19770

Frederick R. Blackwell, Referee

(R. D. Woodrum

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intentions to file an **ex parte** submission on March 22, 1972, covering an unadjusted dispute between me and the Norfolk & Western Railway Co. involving the question:

That the Carrier violated the current Clerks Agreement, as amended particularly rules **#1-2-3-5-6-36-38-39-49** and 65, when on the dates of April 16-17-18-19-23-24-30, 1971 also May **1-2-3-7-8-9-10-14-15-16-21-22-23-24-29-30-31**, 1971 and June **3-4-5-6-7-10-11-12**, 1971, I was removed from my regular assigned position of Billing Clerk, which works 7:00 A.M. till 3:00 P.M. Thursday through Monday, with Tuesday and Wednesday as assigned rest days, to fill the position of Scale Clerk, which is assigned to work 7:00 A.M. till 3:00 P.M. Friday through Tuesday, with Wednesday and Thursday as assigned rest days.

That the Carrier violated the current Clerks Agreement, as amended particularly rules **#1-2-3-5-36-38-39-49** and 65 when **on** the dates of June 13-14-17-24-25-26-27 and 28, 1971 and on the dates of July 16-18-19 and 23, 1971 and on the dates of August 5-6 and 7, 1971 I was removed from my regular assigned position of Billing Clerk which works 7:00 A.M. till 3:00 P.M. Thursday through Monday, with Tuesday and Wednesday as assigned rest days, to fill the position of Scale Clerk, which works 7:00 A.M. till 3:00 P.M. Friday through Tuesday with Wednesday and Thursday as assigned rest days.

OPINION OF BOARD: A conference on the property was not held prior to submission of this claim to this Board and, for that reason, Carrier contends there is a jurisdictional bar to this Board's consideration of the claim. Carrier also contends the claim is barred in that no claim, framed in the language submitted to the Board was ever presented on the property; we find no merit in this contention as there is no substantial difference between the claim submitted on the property and the one submitted here.

While claimant concedes the conference requirement applies to a claim which is handled by the Organization, he contends the conference requirement is inapplicable where, as here, the individual handles his own claim. Claimant also contends that an individual filing a claim under Rule 40 of the Agreement between the parties, effective January 1, 1965, is not required by **any express** provision in such Rule to submit his claim to conference on the property. And finally, claimant contends the conference requirement was disposed of by the inability of Carrier and himself to agree on a date, time, and place for a conference.

Claimant calls attention to Awards 19276 (Edgett) and 19302 (Cole), which he believes stand for the proposition that an individual claimant is not subject to the conference requirement. We have studied these Awards carefully, but find that in neither of them does the Board make any reference at all to the conference requirement and its jurisdictional implications. Consequently, we consider these Awards inapplicable to the issues herein. However, the conference requirement was extensively treated in Award 22101 (First Div., Malkin), which involved an individual claimant and this same Carrier, and which held that the conference requirement must be met by the individual claimant before Board jurisdiction can vest. Three other Third Division Awards involving individual claimants and this same Carrier have held that a jurisdictional bar results from a claimant's non-compliance with Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Awards 18330 (O'Brien), 18394 (Franden), and 18662 (Franden). Circular No. 1 of the National Railroad Adjustment Board provides:

"All disputes between a carrier **or** carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

In view of the unambiguous language in Circular No. 1, as well as the Rulings in First Division Award 22101 and Third Division Awards 18330, 18394, and 18662, we think it is crystal clear that the individual claimant, and the claimant who has representation, are under the same obligations to comply with the conference requirement before submitting a claim to this Board. Furthermore, since the source of the conference requirement is found in the Railway Labor Act and in Circular No. 1, we believe claimant's contention that Rule 40 of the instant Agreement contains no express conference requirement is irrelevant.

Claimant contends, in the alternative, that **the** conference requirement has been disposed of anyway, because, although he requested a conference, a conference did not occur because of mutual inability of the parties to agree on a date, time, and place for the conference. In effect claimant says there is excusable reason in his case for non-compliance with the conference requirement. We do not **agree**.

Claimant's request for conference at Portsmouth, Ohio was not agreeable with Carrier, but Cattier offered a conference at Roanoke, Virginia. Claimant rejected this offer because of prior commitments, whereupon Carrier made a further offer of conference at Roanoke, Virginia, including optional dates. Claimant rejected this offer because, due to "a personal matter", he was "not **permitted** to be out of the city over night". These facts may amount to personal inconvenience to claimant, but, without more, they do not justify **or** explain his responsibility for the conference not having been held on the property.

On the record as a whole there is a jurisdictional bar to this Board's consideration of the claim and we shall therefore dismiss the claim.

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 does not have jurisdiction over the dispute involved herein for the reasons indicated in the Opinion; and

That the **Claim** be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

ATTEST:

*E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.