

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19809**
Docket Number MS-20083

Frederick R. **Blackwell**, Referee

(William H. Lee

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company
((Northern Region)

STATEMENT OF CLAIM: This is to serve notice, as required by rules of the National Railroad Adjustment Board, of my intention to file an **ex parte** submission on 30 days **from** the date of this notice covering an unadjusted dispute between me and the Chesapeake & Ohio Railway Company involving the question:

Whether the undersigned was validly found to have threatened his supervisor; and whether the penalty, dismissal from the service of the Company, **was** properly imposed.

OPINION OF BOARD: Claimant presented this claim by filing an **ex parte** submission, **pro se**, in connection with his dismissal from Carrier's service on March 3, 1970 following a February 27, 1970 hearing on charges of threatening his foreman with bodily harm. On March 16, 1970 Carrier's Division Engineer Cross received a telegram signed Eddie D. Smith, attorney, which stated, that Mr. Smith had been retained by claimant in regard to his dismissal from Carrier's service. The telegram requested information **on** procedures for exhaustion of "intra union or company remedies" and also **stated** that the telegram should be construed as an appeal. By letter dated **March** 25, 1970 the Carrier acknowledged receipt of the telegram and provided a copy of the hearing transcript, a copy of the applicable Agreement, and **the** name and address of the official with whom to file an appeal. No further action to progress the claim **was** taken until October 11, 1972, when the claimant himself filed with this Board a notice of intent to file an **ex parte** submission.

The Carrier contends the claim is not properly before the Board in that the claim has not been handled properly under the Railway Labor Act nor in accordance with the rules of the applicable Agreement.

A review of the above stated facts and the whole record makes it clear that Carrier's contention is valid. The claim was not handled on the property of the Carrier in accordance with the provisions of the applicable Agreement nor as required by Section 3, First (1) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The claim is therefore barred from consideration by the Board and we shall dismiss the claim.

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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; and

That the claim is barred.

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 **20th** day of **June 1973**.