

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19885
Docket Number MS-20112

Irving T. Bergman, Referee

(F. D. Whisman

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 my intentions to file an **ex parte** submission on or Before February 15, 1973 covering a" un-adjusted dispute between me and the Norfolk and Western Railway Company involving the question:

That the Carrier violated the current Clerks' Agreement particularly rules 1-3-6 and 10, when on the date of December 22, 1971 it permitted Clerk **H. L. Kinker**, after he was disqualified in Portsmouth East Yard Checker position, to return to the Portsmouth Scale Office Extra List.

Under the provisions of rule 10 Clerk, Kinker should have returned to his former position as a furloughed Clerk in the Portsmouth West Yard, his status before he was awarded the position from which he was disqualified from.

Due to the Carriers failure to comply with the provisions of the current Clerks' Agreement, please accept this claim and to run continuous until the violations is corrected for eight **(8)** hours per day, five **(5)** days per week, for each day Clerk Kinker works, whichever is greater, at the monthly rate of pay in the **amount** of \$780.18 or \$772.16, whichever applies, these amounts to include future adjustments.

No oral hearing is requested in this submission.

OPINION OF BOARD: The Carrier has raised a jurisdictional question which must be disposed of before proceeding to the merits of the claim. The Carrier contends that we have no right to consider this petition because the claimant failed to discuss his claim in conference with the Carrier as a required step in handling the claim on the property before coming to this Board. The Railway Labor Act, Section 3, First **(1)**, and Circular No. 1, of the National Railroad Adjustment Board are cited as authority for this position.

Claimant has contended that he filed his claim under Rule 40, of the Agreement and that the Rule does not specify the requirement of a conference. In any event as a" individual claimant, that requirement does not apply.

It has Pot been refuted by claimant that the accepted practice over many years has been to hold the conference at the Carrier's General Office in Roanoke, Virginia. This was offered to claimant who insisted instead to hold the conference elsewhere on the property with the result that the conference was not held.

The jurisdictional issue herein has been adequately discussed and disposed of in prior **Awards**. Suffice it to say that in Award 19620 of this Division, decided in February of this year, the identical defense was interposed by the Carrier, under the same circumstances. The claim was dismissed on the jurisdictional issue.

Award 19620 referred to three prior Awards of this Division which decided that individual claimants have the same obligation as though they were represented by their Organization, to comply with the Railway Labor Act and Circular No. 1. Award 19620, also decided that the Railway Labor Act and Circular No. 1, must, in effect, be read into all agreements as a law enacted by Congress, and that Circular No. 1, of this Board has the effect of law. Accordingly, Rule 40, must be read together with the Act and the Circular. First Division Award 22101, decided that an individual claimant must meet the requirement for a conference. All the Awards cited involved the same Carrier as in this case.

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 there is a jurisdictional bar to our consideration of the merits.

That the claim be dismissed.

A W A R D

Claim dismissed.

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

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.