

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19992**
Docket Number MS-19992

Burl E. Hays, Referee

PARTIES TO DISPUTE: (Fred J. Kaltenbach
(The Chesapeake and Ohio Railway Company
(Northern Region (Excluding Hocking Division)

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 11-13-72 covering an unadjusted dispute **between me** and the C & O Railway. Involving the question of the Railway under the Grand Rapids Division of having Nahum Avery (Section Foreman), after being discharged and removed **from** the roster for approximately seven months, reinstated to fill my position as Machine Operator (which I had held since 7-1-52) thus causing me to be demoted to **trackman**.

This is consistent with how the Company and the Union have settled similar cases in the past. Please advise as to the Counsel **referred** to the **ex parte** submission. Does this mean that it is permissible to have a Civil Lawyer as a representative for me?

OPINION OF BOARD: There is no point in setting forth the allegations of Claimant upon which his claim is based in view of the fact that it is crystal clear from **examination** of the record that proper appeals procedure on the property has not been followed.

Section 3, First (i), of the Railway Labor Act, sets forth the requirements for handling disputes because of alleged grievances. Before cases can be considered by this Board they must be handled in the usual manner on the property. Claimant has ignored the procedure set forth in the Railway Labor Act in attempting to bring his claim to this Board. (Award #19888). Therefore, we are barred **from** considering the merits of the claim and it 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 Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim **be dismissed.**

A W A R D

Claim dismissed.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 12th day of October **1973.**