

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20079  
Docket Number MSX-20259

Irwin M. **Lieberman**, Referee

(Michael J. O'Hora

PARTIES TO DISPUTE: (

(REA Express, Inc.

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 March 19, 1973 covering an unadjusted dispute between me and the R E A Express involving the question:

On January 18, 1973 I was dismissed from service by ~~my~~ employer, REA Express, reason given: failing to comply with the terms of the Union Shop Agreement existing with **REA** and Brotherhood of R & S Clerks, Freight Handlers, Empress and Station employees.

As I complied with the terms of the Union Shop Agreement I maintain that my dismissal was in error.

EXPLANATION

In 1952 my application for membership in the Brotherhood, my check for initiation fees and a letter of rejection (copy enclosed) was returned to me.

This rejection relegated me to a non-union employee status, under which I have since been employed, and as this rejection has not been **recinded** this status should continue to exist. I maintain that **REA** has no grounds for charges, until this letter of rejection is nullified, and in order, a request for my membership initiated by the Brotherhood.

**Note:** An oral hearing not desired.

OPINION OF BOARD: This matter is concerned with a dismissal based on alleged failure to comply with the **terms** of the Union Shop Agreement. Based on the record we find that the case was not properly progressed on the property as required by Rule 14(d) of the Agreement. That Rule provides for appeal within nine calendar days from the date of the decision to the highest officer of the REA Express designated to handle such appeals; this Claimant failed to do. Section 3, First (i) of the Railway Labor Act, as **amended**, provides in part: that disputes "... shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." Since Claimant has not met the requirements outlined above, the case must be dismissed (See **Awards** 16282, 16245 and 15384 among others).

**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 was not handled in accordance with the Rules.

**A W A R D**

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.