

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20188
Docket Number MS-20203

Joseph A. Sickles, Referee

(Darryl Dodds

PARTIES TO DISPUTE: (

(Chicago and Western Indiana Railroad Company

STATEMENT OF CLAIM: This is to **serve** notice, as required by the rules of the National Railroad Adjustment Board, of our clients intention to file an **ex parte** submission on December 29, 1972, covering a dispute between DARRYL DODDS, and the **Chicago &** Western Indiana Railroad Company involving the following matter.

The petitioner, DARRYL DODDS, claims that his seniority and employment were wrongfully terminated by the Chicago & Western Indiana Railroad Company on December 15, 1971.

OPINION OF BOARD: On November 6, 1971, Carrier received notification that Claimant had failed to comply with the requirements of the Union Shop Agreement.

On November 8, 1971, Claimant was so advised. He requested a Hearing, which was conducted on December 10, 1971, and Claimant was subsequently found guilty as charged. Claimant appealed the finding to Carrier's highest designated officer, who denied the appeal in a letter dated December 27, 1971.

Section 5 (b) of the Union Shop Agreement states that a denial by the highest officer of the Carrier designated to handle appeals is final and binding unless, within ten (10) calendar days, the Organization or employee requests the selection of a Neutral person to decide the dispute.

Section 5 (c) of that Agreement states the procedures for selection of a Neutral person to act as sole Arbitrator to decide the dispute and further, mandates that his decision shall be final and binding.

Rather than requesting selection of a Neutral within ten (10) days, Claimant, instead, chose to notify this Board, on November 29, 1972 (some eleven (11) months after the denial of his appeal) of intention to file an **ex parte** submission.

Claimant contends that his seniority and employment were wrongfully terminated on December 15, 1971 and submits various arguments in support thereof, some of which are testimonial in nature. Carrier contends that further appeal should have been made under the Union Shop Agreement, and in the absence of same, the decision of the highest Carrier official stands as final and binding.

We concur with Carrier's view. Any relief, or request for redress should have been addressed, within the applicable time limits, to a Neutral Arbitrator for determination in that forum, under the wording of Section 5 of the Agreement. This Board has no jurisdiction to consider the dispute.

In Award No. 6518, this Board noted:

"Section 5 (c) of the Union Shop and Check-off Agreement between the Delaware and Hudson Railroad Corporation and its employees represented by the Brotherhood of Maintenance of Way Employees provides a final and binding procedure that must be adhered to when an employee subject to the provisions of said Agreement believes that his seniority and employment under the Rules and Working Conditions Agreement has been improperly terminated and it is his desire to appeal from such decision."

"The Claimant in this instant case did not proceed in accordance with the required procedure and request that a neutral be appointed to decide the dispute."

Accordingly, we must dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.