

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20627
Docket Number MS-20558

William M. Edgett, Referee

(Terry A. Solla

PARTIES TO DISPUTE: (

(Bessemer and Lake Erie Railroad Company

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 within thirty (30) days of the date of this notice covering **an** unadjusted dispute between me and the Bessemer and Lake Erie Railroad involving the following question:

'das not an unfair labor practice been **committed** by the carrier **when** said carrier terminates the employment of an employee (carpenter) for his failure to **climb down** onto an **85-foot** pier that spans the Allegheny River when inadequate safety measures and unsafe working conditions existed at the job site?

A subsequent investigation requested by Congressman Frank M. Clark of **Pennsylvania** revealed unsafe working conditions at the site and no work was done there after said investigation until safety features were implemented.

OPINION OF BOARD: Carrier offers several defenses to this claim. **The** view the Board takes of one of them makes it unnecessary to consider the others.

Carrier asserts, and the record shows, that the claim **now** before us has not been handled **on** the property, as required by Section 3, First **(1)** of the Railway Labor Act and Circular No. 1 of this Board. The sequence of events illustrates what has occurred.

Claimant was dismissed from Carrier's service after Carrier found that he had refused to perform assigned work. A claim, denominated Case 320, was progressed by the General Chairman of the Brotherhood of Maintenance of Way Employees to Carrier's highest appeal level. **That claim** is not before us now.

The claim **now** before us first came to Carrier's attention when it received a letter **from** the Board's Executive Secretary which contained the text of the **claim**. Although **it** is based on the same incidents and resultant discharge, the **claim** is novel or new to Carrier **in** that the theory of violation it expresses has not been proffered to Carrier in Conference on the property so that Carrier has had **an** opportunity to consider and respond or

react to it. The opportunity to adjust grievances on the property is a central **part** of the statutory design. When that opportunity has not been presented, this Board has no alternative to a dismissal of the claim.

Nothing said here is **intended** to have any affect on Case 320, referred to above, should it reach the Board for adjudication.

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 must be dismissed.

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 7th day of March 1975.