

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24083  
Docket Number MS-24321

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: { Joe Frasher  
{ 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 intention to file an ex parte submission on October 30, 1981 covering an unadjusted dispute between me and the Norfolk and Western Railway Company involving the question:

Am I entitled to reimbursement and compensation because I was cutoff my job with headquarters in Chillicothe, Ohio and put in a worse position by having to drive to Portsmouth, Ohio each day? During this time and at present I am top man on the roster with seniority and younger men was kept on the job on the Scioto Division."

OPINION OF BOARD: Claimant was employed as an electric welder in Carrier's Maintenance of Way Department at Chillicothe, Ohio. On April 16, 1981, claimant's position was abolished. He subsequently exercised his seniority to obtain an electric welder position at Portsmouth, Ohio. His claim is for 50 travel miles each way from Chillicothe to Portsmouth and return plus two (2) hours additional pay each work day plus reimbursement for one (1) meal each day.

This claim is fatally flawed for several reasons, namely:

There was no timely claim initiated and progressed as required by the negotiated Rules Agreement;

There was no on-property conference held to discuss the complaint as required by the Railway Labor Act; —

The dispute involves an alleged violation of a merger agreement which agreement contains its own disputes resolution provisions.

Section 2, First and Second of the Railway Labor Act, as amended, states in relevant portion as follows:

"It shall be the duty of all carriers, their officers, agents, and employes to exert every reasonable effort . . . to settle all disputes . . . ." (45 U.S.C. § 152, First).

"All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and

"authorized so to confer, respectively, by the carrier or carriers and by the **employees** thereof interested **in** the dispute ...." (45 U.S.C. § 152, Second).

Section 3, First (1) of the Act mandates that all disputes between an **employee and a carrier** -

" . . . be **handled** in the usual **manner** up to and including the chief operating officers of the carrier designated to **handle** such disputes . . ." (45 U.S.C. § 153, First (1)).

Section 301.2(b) of the **Rules** of Organization and Procedure issued by the National **Railroad Adjustment** Board as Circular No. 1 **dated** October 10, 1934 **states** -

"(b) No petition shall be considered by **any division** of the Board unless the subject matter has been **handled** in **accordance** With the provision of the **Railway Labor Act**, approved **June 21, 1934.**"

The record **in** this use clearly shows that none of the aforestated **conditions** were met by **claimant**. The Board has no recourse **but** to **dismiss** this claim.

**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 **Employee** involved in this dispute are respectively **Carrier and Employee** 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.

A W A R D

Claim dismissed.

RECEIVED  
JAN 11 1983  
Chicago  
NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

**ATTEST:** Acting **Executive** Secretary  
National **Railroad Adjustment** Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, **Illinois**, this 5th day of January 1983.