

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24360  
Docket Number MS-24584

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Shirley Bond  
(  
(Consolidated Rail Corporation

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 or before February 22, 1982 covering an **unadjusted** dispute between me and Conrail involving the propriety of my discharge on June 24, 1980."

OPINION OF BOARD: Following an investigation conducted under the provisions of the collective bargaining agreement on July 25, 1980, **claimant** (Petitioner) was dismissed from Carrier's service on August 5, 1980, for the offense:

"Submission of false doctor's certificate to support your absence from duty and secure **wages** for your absence of June 20, 23 and 24, 1980."

Following Claimant's dismissal, the duly authorized **union** representative appealed a **claim in** Petitioner's behalf in the **usual manner** up to the **Senior Director-Labor Relations**, the highest designated officer of appeals for the Carrier. The record is clear that the Senior Director-Labor Relations denied the appeal on October 22, 1980. On January 22, 1982, Petitioner filed **formal** notice of intention to file an **ex parte** submission with this Division, in accordance with Circular No. 1 of the National Railroad Adjustment Board.

The Carrier cites Rule 43(e) of the collective bargaining agreement, which rule reads:

"(e) An appeal denied in accordance with paragraph (d) shall be considered closed unless, within one (1) year from the date of the decision of the **Senior Director-Labor Relations**, **proceedings are** instituted before the **National Railroad Adjustment Board** or such other **board as may** be legally substituted therefor under the **Railway Labor Act**."

The Carrier contends that es proceedings were not **instituted** before the **National Railroad Adjustment Board** within the **time** specified in Rule 43(e) the dispute is not properly before the **Board** and must be dismissed. **This Board** has issued **numerous** awards dismissing claims when rules similar to Rule 43(e) herein were not complied with.

Another **reason** for dismissal of the dispute is that there is no showing that the material submitted to the **Board** by the Petitioner, a notarized statement signed by Barbara Newsome and a notarized statement signed by Petitioner, Shirley

M. Bond, were presented to the Carrier prior to submission to this Board. It is well settled by **awards** of this Board, legion in number, that evidence or issues not raised in the handling of the dispute on the property may not be raised for the first time before the Board. Further, **in** disputes involving discipline, this Board has consistently end **repeatedly** held that the parties to such disputes end the Board itself **are** each and all restricted to the **testimony** introduced et the disciplinary hearing **or** investigation.

A copy of the transcript of the disciplinary investigation conducted on July 25, 1980, has been made a part of the record by the Carrier. A review of that transcript shows that **Claimant** (Petitioner), who was represented et the **investigation** by a union representative, was **not** precluded from introducing evidence. The record shows that et the beginning of the hearing the following question was asked of Miss Bond by the conducting officer:

"Miss Bond: Do you end your **representative** understand that you **may** present, or **have** presented **on** your **behalf**, any evidence **that** is pertinent to the offense with which you • re charged?"

Miss Bond answered in the **affirmative**, end stated that she was reedy to proceed with the **investigation**. The hearing officer did refuse **Petitioner's** representative's request **for** postponement of the investigation, which request was not made until near the conclusion of **same**. We see nothing improper in this. **If** the Petitioner, or her representative et the investigation, believed that **additional time** was needed to obtain evidence, request **for** postponement should have been made prior to or et the beginning of the investigation. There was **substantial** evidence introduced et the **investigation** in support of the **charge** against **Claimant** (Petitioner).

For the foregoing **reasons**, the claim submitted to the Board by the Petitioner will be dismissed.

FINDINGS: **The** Third Division of the Adjustment **Board**, upon the whole record end all the evidence, finds end holds:

That the **parties** waived oral hearing;

**That** the **Carrier** end the **Employees** involved in this dispute are respectively Carrier end **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; end

**That** the **claim** be dismissed.

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Claim dismissed.

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

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.