

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25298
Docket Number MS-25232

George S. Roukis, Referee

(Randall D. Askins

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: (As understood from Individual's Notice of Intent dated April 26, 1983.)

"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 April 26, 1983 covering **an** unadjusted dispute between me and the B&O Railroad involving the following:

I was employed by the B&O Railroad on November 10, 1975. I obtained the employment through the State of Ohio Employment Service in Ottawa, Ohio. **This** office informed that I would have to pass a physical but didn't schedule me **an** appointment and immediately sent me to work. . . ."

OPINION OF BOARD: Based upon a careful review of the submissions adduced by the parties, the Board finds that Petitioner had not **observed** the hierarchical grievance appeals steps prescribed by the Controlling Agreement. In effect, Claimant's counsel did not respond to Carrier's March 22, 1983, **letter** which denied Claimant's request for a reconsideration of his seniority status; but instead served notice with the Third Division on April 26, 1983, to file **an ex parte** submission.

As a decisional body created by the Railway Labor Act 1934, as Amended, this Board is pointedly precluded from reviewing and deciding **Employee** claims that were not fully handled on the Employer's property. We are required by the law to consider only those Claims that were not able to be adjusted in accordance with the grievance appeal steps of the governing Collective Agreement; and barred from entertaining **De Novo** claims, or claims that were not progressed on the property. This restricted definable authority flows from 45 U.S.C. Section 153, First (i) of the statute, which explicitly requires handling up to and including the Chief Operating Officer of the Carrier as a condition precedent to an appeal at our level; and we are not at liberty to vary this precise appellate requirement. Section 153, First (i) states that grievances:

"...shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach **an** adjustment in this manner. the dispute may be referred by petition. . .by either party to the appropriate division of the Adjustment Board."

From this record, it is manifestly evident that Petitioner did not observe and exhaust the applicable on-situ appellate steps and, as such, we are constrained by the Railway Labor Act, the National Railroad Adjustment Board's Circular #1 and the various Division's consistent holdings on this point from assuming jurisdiction. The claim is barred.

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

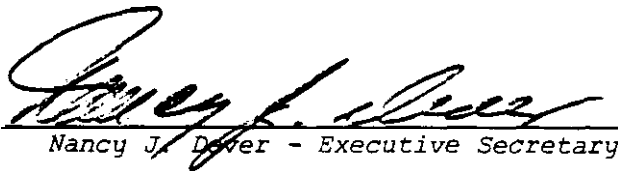
That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985,