

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26240
Docket Number MS-26912

Edwin H. **Benn**, Referee

(William L. Johnson. Jr.
PARTIES TO DISPUTE: (
(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 covering an unadjusted dispute between me and the Norfolk and Southern Railroad involving the question: of my losing my seniority rights.

I was transferred to the Fort Wayne, Indiana district in March, 1984. On or about November 15, 1984 I was laid off. I was verbally told, by Larry Hollinger, foreman, to report to the Chicago district within ten days for the purpose of holding my seniority rights.

When I reported to the Chicago district, I was told that I was two days late. I took the ten days to report to the Chicago district to mean ten working days. My other question is the manner in which I was informed to report to the Chicago district. I feel I should have been given written notice and have the instructions fully explained to me."

OPINION OF BOARD: By letter dated July 8, 1986, and received by the Board on the same date, Claimant requested an Oral Hearing before this Board with the Referee present. By Certified letter dated November 25, 1986, and signed for on November 28, 1986, Claimant was formally notified that his request for a Hearing before this Board was granted and that the Hearing was scheduled for January 6, 1987, at 1:00 P.M. On January 6, 1987, this Board convened for Hearing in accord with Claimant's request. Claimant did not appear at the designated time. The Hearing was adjourned until 1:20 P.M. to await for Claimant's arrival. At 1:20 P.M. the Hearing was reconvened and Claimant was still not present. The Hearing then proceeded in Claimant's absence.

Claimant, a Laborer, was assigned to the Carrier's Fort Wayne, Indiana District. Effective November 7, 1984, Claimant was furloughed due to a general reduction in maintenance forces and was instructed by his immediate Supervisor, Foreman L. Hollinger, to report to the Carrier's Chicago District within ten days for the purpose of holding his seniority rights. Claimant did not report to the Chicago District until November 20, 1984, and further made no written request to retain his seniority. Claimant was informed that since he failed to protect his seniority rights in writing and within 10 days, those rights were forfeited.

By letter dated March 19, 1986, and received by this Board on April 21, 1986, Claimant filed his notice of intention to file an **Ex Parte** Submission with this Board in this matter. Prior to the filing of Claimant's letter with this Board, no Claim was filed or processed on the property.

section 153, First (i) of the Railway Labor Act and Article V of the applicable Agreement preclude us from considering the instant Claim. Section 3, First (i) requires that disputes "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes" Article V of the applicable Agreement requires the processing of disputes on the property prior to submission of the dispute to this Board and further requires that claims must be filed within "60 days from the date of the occurrence on which the claim or grievance is based." Claimant did not file his Claim in the usual and customary manner up to and including the Carrier's highest designated officer and further did not do so within the designated time limits for the filing of the same. We therefore lack jurisdiction to consider the matter. Third Division Awards 25557; 24083; Second Division Award 2240.

Even if we could consider the merits of the Claim, the Claim would be denied. Rule 5(a) of the applicable Agreement is self-executing and mandates the forfeiture of seniority in this matter. Rule 5(a) states that "Employees laid off by reason of force reduction desiring to retain their seniority, must file with their superior officer, a written statement indicating their desire, and setting out their address. This statement must be filed within ten days after being laid off." Failure to meet these requirements causes the employees to "forfeit all seniority" Claimant did not protect his rights in writing and in a timely fashion in accord with the requirements of Rule 5(a). Claimant therefore forfeited his seniority rights.

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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1987.