

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27505
Docket No. MS-27708
88-3-87-3-507

The Third Division consisted of the regular members and in addition Referee Jack Warshaw when award was rendered.

(Glen E. Rice
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Wrongful Discharge, Glen E. Rice, fully excepted 'Pricing Specialist' requests reinstatement; back pay and incentives, damages, and attorney fees."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant contends that he was constructively discharged when he was unwilling to perform allegedly felonious acts requested by his supervisor and thereby coerced into resigning from the Carrier's service. Denying the allegations that the Carrier demanded illegal or improper activities of the Claimant, the Carrier argues that the Claimant's resignation was voluntary.

The Board finds that the claim was untimely filed when it was submitted more than five years after the Claimant's letter of resignation dated January 1, 1982. Moreover, there is no evidence that a conference occurred as required by the Railway Labor Act. (Third Division Award 26275 - citing nine additional Awards). In addition there is no evidence that the claim was appealed on the property as required by the Agreement. (Third Division Awards 25252, 25298.)

The Board finds that even if the merits could be reached, the claim would have to be denied as the Claimant resigned from the Carrier's service on January 1, 1982, and there is no evidence that such resignation was coerced. (Third Division Awards 19455, 19556, 21264, 26008.)

Form 1
Page 2


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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 22nd day of September 1988.