

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Robert L. Northern
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern 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 Elgin Joliet Railroad Company, and the Brotherhood of Maintenance of Way Union, involving the question of how lower rank furloughed employees were issued a job working as Garage Serviceman for twenty nine days or more. I was not informed by the carrier that there were any openings for a Garage Serviceman, I was furloughed at the time and had signed papers at Base 6 with the Head Clerk, stating that I would be available for any openings, (jobs). After these findings I wrote a letter to the General Chairman asking him to check into the matter. The results Mr. General Chairman wrote was that the Carrier in error awarded the position to those who submitted a bid on the presumption that they were the only ones to be interested in the position.

Rule 31 F clearly states that when a vacancy or new position is bulletined all furloughed employees in the seniority group and rank in which the vacancy exists shall be sent a copy of the bulletin advertising the position by certified mail. Said bulletin shall be sent to in the Carrier's obligation in regard to notifying non-working furloughed employees of vacancies or new positions and for them to declare their desire and availability for services. I was not informed of the vacancy, I was available and would have been interested in the position without any hesitation. I considered the error to be too great to overlook. My family and I have been affected by my furlough and this serious mistake. I can not except lower rank furloughed employees working while I was sitting at home drawing \$25.00 a day. In April I ask the Local Chairman and the General Chairman in writing to put in a time claim. I was informed by the General Chairman that no time claims would be accepted, because of the error, but I was not responsible for the error and feel I am due the time that was lost to me, because I have been dealt with unfairly. If this matter can not be cleared I would desire to have an oral hearing at the N.P.A.B. headquarters Chicago Illinois." (sic)

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 were given due notice of hearing thereon.

On July 1, 1986, the Claimant served notice on the Board of his intention to file an Ex Parte Submission involving an "unadjusted dispute." The Carrier contends it first became aware of the dispute from the Board by letter dated July 10, 1986, with the Claimant's notice attached. The Carrier insists there is no record the Claimant filed a Claim under the applicable Agreement and, therefore, under Rule 59, the Claim was untimely. Furthermore, the Carrier charges the Claim was not handled in the usual manner on the property, and no on-the-property conference was held.

This Board finds no evidence in the record which contradicts the Carrier's view of the facts. The Claim, as presented, offers no facts or evidence to support the "unadjusted dispute" was filed in a timely manner. Rule 59 requires that:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the Officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based."

This Board has no authority or jurisdiction to extend the time within which claims or grievances must be filed (See Third Division Award 25252). Furthermore, this Claim was not the subject of a conference required by Section 3 First (1) of the Railway Labor Act; therefore, this Board finds the instant Claim to be procedurally defective and must be dismissed.

A W A R D


Claim dismissed.

Form 1
Page 3

Award No. 28167
Docket No. MS-27207
89-3-86-3-413

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.