

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31851  
Docket No. MS-32403  
97-3-95-3-265**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.**

**(Gloria J. Caruthers**

**PARTIES TO DISPUTE: (**

**(The Atchison, Topeka and Santa Fe Railway Company**

**STATEMENT OF CLAIM:**

**"Unfairly held off positions in Kansas City and being implemented to Topeka when there were positions to be filled in Kansas City.**

**I was furloughed effective July 25, 1994, seniority date 11-20-74, Grain Business Unit at Kansas City. Immediately upon my furlough, I requested to transfer to the Kansas City System Support Office by Rule 5 and was turned down. Since my furlough approximately five were hired as new employees, see attached seniority roster. Also, there are approximately 14 non-protected employees in Kansas City. In view of these facts, I was implemented to Topeka Accounting, waybilling department position 6884 effective June 7, 1995.**

**Why wasn't I put on one of these positions in Kansas City?**

**I request to be implemented on a position in Kansas City System Support Department."**

**FINDINGS:**

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

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was placed in an off-in-force status effective July 25, 1994, and received protection under the February 7, 1965 National Mediation Agreement, as amended January 1, 1980. Claimant submitted a request to the Carrier's Kansas City System Support office to be hired under Rule 5, which request was not accepted. Thereafter, Claimant remained in a protected status.

An agreement between the Carrier and TCU of March 30, 1995 resulted in the placement of Claimant in a position in the Topeka Revenue and Customer Accounting seniority district. Claimant then transferred.

The TCU General Chairman wrote the Carrier on Claimant's behalf requesting that the Carrier give consideration to Claimant for a position in the Kansas City System Support office. That request was denied.

**This claim will be dismissed.**

First, no claim was filed on the property as required by Rule 47-A (1) ("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 60 days from the date of the occurrence on which the claim or grievance is based..."). Instead, Claimant brought this matter directly to this Board. Without a properly filed claim, "[w]e therefore lack jurisdiction to consider the matter." Third Division Award 26240 and Awards cited therein.

Second, but even if this Board could consider the merits of Claimant's assertions, we would deny the claim. Rule 5-A states, in pertinent part:

**"... Except as provided in Rule 19, employees transferring to another seniority district or off-in-force reduction employees who are hired in another seniority district shall have their seniority in the district where employed at the time of transfer or hiring out in another seniority district, transferred and dovetailed into the district to which transferring or being hired ...."**

Under that Rule, the Carrier was not obligated to place Claimant into another seniority district as Claimant desired. Therefore, no Rule support exists for Claimant's assertions.

**AWARD**

**Claim dismissed.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

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

**Dated at Chicago, Illinois, this 4th day of March 1997.**