

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35366
Docket No. MS-35292
01-3-99-3-164**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

(J. W. Morris

PARTIES TO DISPUTE: (

(Belt Railway Company of Chicago

STATEMENT OF CLAIM:

“Unfair hiring practices, rate of pay and rest day schedule. While furloughed all union members received a pay adjustment, which they were given the position of sergeant. This was in order to give them the pay adjustment. At this time I was a member of the union on furloughed. Mr. Thomas Leavitt also was a member of the union and furloughed returned to work after the retirement of Mr. Bill Johnson. Upon Mr. Leavitt's return he was given the position of Sergeant and started at then union full rate of pay, and given the position of Sergeant. This was done with the full knowledge of the union.

After being furloughed I returned to the Belt Railway Company. Upon my return I was told that I would receive full union pay. However before my return the Chief of Police, Mr. Mark O'Donald, abolished a job post another to avoid paying the higher rate of pay. Chief O'Donald posted the position as a patrolman's job and extra board man.

On February 08, 1999 I filed a grievance in accordance with the contractual agreement of Allied Services Division of the AFL-CIO, CLC. Chief O'Donald then began to harass me by splitting my rest days and giving me less than 15 hours rest between shifts.

On March 10, 1991 received a letter from Allied Services, which fails to address my grievance in full. Additionally, the union denied my claim for 'Same work, same pay.'

Due to the collusion between the Belt Railway Company and the union I am seeking the Right to Sue. In addition I want to be made whole and paid at the union scale with all back pay and all harassment stopped.

It is the position of the employee that the Belt Railway Company has failed to pay me union scale in that the promotions were given to adjust the salary of the officers. These sergeants have no administrative duties over me and perform no duties that differ from mine. In addition when told about the pay difference Chief O'Donald began to make the job more difficult than necessary. He accomplished this by splitting my off days and giving me less than 15 hours rest as outlined in the union agreement and not paying me at the over time rate.

It is the position of the employee that I have been discriminated against in that Mr. Leavitt is White Male and I am a Black Male performing the same work for less pay. Mr. Leavitt was brought back under the same circumstances and given the position of sergeant and given the pay adjustment, as agreed to by the union. In addition the union had and has knowledge of this and fail to provide service to a member causing me further harm and allowing the Chief of Police to continue violating the contract and my rights under the contract."

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.

Parties to said dispute were given due notice of hearing thereon.

In 1999, the Claimant was employed as a Patrolman. On February 8, 1999, the Claimant filed a claim with Mark O'Donnell, Chief of the Carrier's Police Department. The claim alleged that when the Claimant was recalled from furlough, he was not promoted to Sergeant purportedly like other Patrolmen who had been recalled from furlough. The Claimant requested that he be promoted to the rank of Sergeant and that he be made whole for the wages denied him.

On March 8, 1999, Chief O'Donnell denied the claim contending that when the Claimant was reinstated for duty, he was specifically advised that he was returning to the Department at the Patrolman's rank with full backpay. The Chief informed the Claimant that he could not be promoted to the rank of Sergeant because the Department had abolished the position of Sergeant.

On March 16, 1999, the Claimant notified the Board that he intended to file an Ex Parte Submission within 75 days involving his February 8, 1999 claim.

Rule 22 of the Agreement between the Carrier and the Allied Services Division of the Transportation Communications International Union mandates the procedure that employees must follow in presenting and progressing all claims and grievances (underscoring added). Rule 22 governed the claim filed by the Claimant on February 8, 1999. However, he completely failed to appeal his claim in the manner required by Rule 22(b) and (c). Rather than appeal the claim on the property as prescribed by Rule 22(b) and (c) the Claimant submitted it directly to the Board.

Inasmuch as the Claimant failed to appeal his February 8, 1999 claim in the usual manner on the property the claim is barred from consideration by the Board. Therefore, we have no alternative but to dismiss the grievance without addressing the contentions raised by the Claimant

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AWARD

Claim dismissed.

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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 20th day of March, 2001.