# Award No. 14139
# Docket No. MS-15660

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

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**PARTIES TO DISPUTE:**

**JUDE T. COTTER**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**
**(Formerly The Order of Railroad Telegraphers)**
**and**
**GRAND TRUNK WESTERN RAILROAD COMPANY**

STATEMENT OF CLAIM.

(1) The Company official who hired me (Mr. Bowers) knew I was employed full time with the Detroit Board of Education. It was because of my full-time employment that I was hired for that particular assignment which called for a person who was available during the summer months and on weekends only.

(2) After working for approximately seven (7) years in one capacity, the conditions of which were well understood by both the Union and the Company, I was ordered to accept work not agreed upon at the time I was hired.

It is my contention that I fulfilled all requirements as specified at the time I was hired; that I was discharged under "highly unusual conditions", and that I am entitled to all benefits I would have received had I not been unjustly discharged, to include:

a. Reinstatement without prejudice,

b. Back wages for whatever position I would have been working since December 19, 1963, had I not been discharged,

c. Vacation benefits that would have accrued,

d. Reimbursement for hospital and medical insurance benefits lost due to discharge.

OPINION OF BOARD: In this case the claimant, Jude T. Cotter, charges both the Carrier and the Union with improper actions in connection with his dismissal from the service of the Carrier, resulting in violation of his contractual rights. He requests remedial action by this Board.

The Railway Labor Act, Section 3, First (i) confers authority upon the National Railroad Adjustment Board only to decide disputes between an

## REPLY TO CARRIER MEMBERS' DISSENT TO AWARD 14138, DOCKET NO. TE-14046

Six times after the dissent to Award 10541 was filed this Board has decided identical disputes contrary to the opinions expressed in that dissent, and in agreement with the opinions expressed in the Reply to Dissent to Award 11454.

As so clearly pointed out in the present award, it appears that at this stage the proper forum is the bargaining table, and further bickering in the form of dissent and response is not only useless but quite unseemly in a body of the Adjustment Board's stature.

J. W. Whitehouse
Labor Member

employe or group of employes and a carrier or carriers. Therefore, this Board has no authority to consider that portion of the instant claim which involves a complaint against the Union, and it must be dismissed.

In considering that portion of the claim which involves a complaint against the Carrier, we are at the outset faced with a contention by the Carrier that the claim is barred through operation of Rule 30 of the applicable collectively bargained agreement. This rule, so far as here pertinent, provides that all claims or grievances involved in a decision by the highest designated officer of the Carrier shall be barred unless within nine months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate Division of the National Railroad Adjustment Board or other proper tribunal.

The record shows that the Carrier's highest designated officer of appeal, after waiving a prior failure of claimant to observe a procedural requirement, rendered its final decision in writing on January 24, 1964.

Proceedings were instituted before the Third Division, National Railroad Adjustment Board, by petitioner's notice of May 14, 1965. This is, of course, much more than nine months after the date of the Carrier's decision. The record shows no agreement to extend the time was made.

Petitioner argues in his rebuttal statement that further handling of the matter with both Carrier and Union has the effect of extending the time limit to the extent of such handling.

This Board has universally rejected identical contentions, Awards 10688 (quoting First Division Award 18054), 11777, 12417, for example. The rule itself provides the method of extending the time: agreement. We have no power to vary the terms of a contract negotiated in conformity with the Railway Labor Act.

Petitioner obviously is of the opinion that his former employment relationship amounted to a special contract transcending the terms of the collectively bargained agreement governing employes in his craft or class. In this, he is mistaken. See decision of the United States Supreme Court in "Order of Railroad Telegraphers v. Railway Express Agency" (321 U. S. 342).

Since the claim in the present case was not appealed to the Third Division, National Railroad Adjustment Board, within nine months from the date of the decision of Carrier's highest designated officer, it is barred, and must, therefore, be dismissed.

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 Employe involved in this dispute are respectively Carrier and Employe 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 to the extent indicated in the Opinion; and

That the claim is barred.

AWARD

Claim dismissed in its entirety in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February 1966.