



**Award No. 15924**

**Docket No. MS-16395**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**George S. Ives, Referee**

**PARTIES TO DISPUTE:**

**PAUL W. PETERSON**

**CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Within thirty days from the date of this letter, I will file in ex parte with your board, an unadjusted dispute existing between me and the Chicago and Eastern Illinois Railroad.

On Dec. 23rd, 1964 at 2:45 P. M., the C&EIRR unexpectedly and without forewarning, lifted me from my first trick telegrapher position at Wansford Telegraph office, Evansville, Ind. and banned me from that particular position under the guise of disqualification.

Subsequent events, which ran from Dec. 23rd, 1964 until April 15, 1965, clearly indicate that the Carrier officials were not disposed to viewing my side of the story with even a reasonable amount of fairness before rendering a decision, and the Carrier did not at any time, before or after, make any real or concerted effort to delve into the Wansford side of the story, etc.

This is further complicated by the fact that the Order of Railroad Telegraphers did a cursory yeoman baywindow check and as I understand it, carried the case under the Railway Labor Act, up to the Chief Operating Officer of the Carrier before they decided to pull out of the picture.

Therefore, in view of the above, my claim is based on one of the oldest principles of justice or the right of the individual to have his side of the story brought completely to light and then let justice be meted out—where it is due. Also any other rights that might be my due which were violated on Dec. 23rd, 1964, according to Union rules or their agreement procedure.

I expect the Carrier to return me to my former position, no strings attached, with all rights intact and reimbursement for all wages lost from Dec. 23rd, 1964, when I was notified it wouldn't be necy [sic] to put in an appearance on first trick the next morning, to date of reinstatement.

**OPINION OF BOARD:** Claimant was removed from his position as the first trick telegrapher at the Wansford Telegraph office, Evansville, Indiana on December 23, 1964 on the basis of disqualification resulting from his refusal to perform duties in the manner prescribed by the Carrier. Ultimately, the Claimant was dismissed from the service of Carrier on April 15, 1965 for failure to protect his seniority by accepting extra work from Carrier's extra board, where he was assigned following disqualification from his former assignment.

Initially, Claimant contends that Carrier violated the applicable Agreement between the Carrier and the Order of Railroad Telegraphers by disqualifying him from service on December 23, 1964. The record discloses that the disputed action of the Carrier was contested and appealed to the highest designated officer, who declined said appeal on February 16, 1965. Claimant did not file the instant claim with this Board until May 5, 1966. It is well established that such an appeal from the decision of the highest designated officer of a Carrier must be filed within nine (9) months from the date of denial in accordance with Article V of the National Agreement dated August 21, 1954. Accordingly, that portion of the instant claim arising out of Claimant's disqualification as first trick telegrapher at the Wansford Yard is barred and must be dismissed.

Claimant also challenges Carrier's authority to dismiss him from service for failure to protect his seniority by accepting other work offered him while he was assigned to Carrier's extra board. A careful examination of the record fails to disclose any probative evidence in support of the Claimant's position that Carrier has abused its authority by acting in an arbitrary, capricious or discriminatory manner. Therefore, we must conclude that Carrier's action was neither unreasonable under the circumstances nor a violation of any provision of the applicable Agreement. The claim must be denied.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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; and

That the Agreement was not violated.

#### AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.