

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19571  
Docket Number MS-19399

Clement P. Cull, Referee

PARTIES TO DISPUTE: (Kathleen H. Chaney  
(  
(The Chesapeake and Ohio Railway Company  
(Chesapeake District)

STATEMENT OF CLAIM: This is to serve notice as required by the rules of the National Railroad Adjustment Board of my intentions to file an ex parte submission on May 1, 1971 covering an unadjusted dispute between me and The Chesapeake and Ohio Railway involving the question of being denied the rights of the Clerks' Agreement, Rule 4, Rule 28, Rule 19, Rule 21, the Washington Agreement of May 1936 and any and all other rules, to exercise my seniority on Position A-22 being held by a junior employee on December 8, 1967.

OPINION OF BOARD: The grievance herein was progressed on the property by the Organization in the usual manner up to an including the highest officer of Carrier designated to handle such disputes. When the claim was denied by the highest officer on April 15, 1969, the Organization decided against appealing the matter to this Board as it agreed with Carrier that its action in refusing to allow claimant to "bump" position A-22 on December 4, 1967, was not violative of the agreement. The claimant when so informed by the Organization refused to accept the decision of the General Chairman not to go forward. Claimant thereupon appealed his decision within the Union first to the Appeals Committee of the Board of Adjustment, then to the International President and finally to the Grand Executive Council. The ruling of the Executive Council dated August 20, 1970 sustained the International President who had previously sustained the decision of the Appeals Committee not to go forward with the case. Prior to these appeals the Union explained to claimant its reasons for not carrying the case further. Meeting with no success within the Union claimant on April 1, 1971, filed with this Board a notice of intention to make an ex parte submission to this Board.

Thus, the Organization and the Carrier are in harmony with respect to the merits of the grievance. The Organization, while stating that the claim lacks merit, would waive the time limit rule in Rule 27½ and proceed to discuss the merits. The Carrier, however, insists that the time limit rule is jurisdictional and that this Board cannot consider the merits until the jurisdictional aspects of the case are disposed of.

Rule 27½ - Time Limits, reads, in relevant part, as follows:

"(c) The requirements outlined in Sections (a) and (b) of this rule pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

It is clear that Rule 27½ requires that matters to be within the jurisdiction of this Board must be brought to it within 9 months of the date of the denial by the highest designated officer unless there has been an extension of time requested and granted. The record is clear that the Notice of Intent herein was filed almost two years after the denial by the highest designated officer. The record shows no evidence of any extension being requested or granted. Nor has it been shown that the time limit in Rule 27½(c) is extended while a claimant exhausts her remedies within the Union.

As the matter was not progressed to this Board in accordance with the requirements of Rule 27½(c) and as Carrier has not waived the application of said rule we must find that the claim is untimely filed with this Board and we are barred by the rule from considering it. Having so found we shall dismiss the claim.

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 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 Claim is barred in accordance with the Opinion.

Award Number 19571  
Docket Number MS-19399

Page 3

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. H. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.