

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20627  
Docket Number MS-20558

William M. Edgett, Referee

(Terry A. Solla  
PARTIES TO DISPUTE: (  
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission within thirty (30) days of the date of this notice covering an unadjusted dispute between me and the Bessemer and Lake Erie Railroad involving the following question:

Has not an unfair labor practice been committed by the carrier when said carrier terminates the employment of an employee (carpenter) for his failure to climb down onto an 85-foot pier that spans the Allegheny River when inadequate safety measures and unsafe working conditions existed at the job site?

A subsequent investigation requested by Congressman Frank M. Clark of Pennsylvania revealed unsafe working conditions at the site and no work was done there after said investigation until safety features were implemented.

OPINION OF BOARD: Carrier offers several defenses to this claim. The view the Board takes of one of them makes it unnecessary to consider the others.

Carrier asserts, and the record shows, that the claim now before us has not been handled on the property, as required by Section 3, First (1) of the Railway Labor Act and Circular No. 1 of this Board. The sequence of events illustrates what has occurred.

Claimant was dismissed from Carrier's service after Carrier found that he had refused to perform assigned work. A claim, denominated Case 320, was progressed by the General Chairman of the Brotherhood of Maintenance of Way Employees to Carrier's highest appeal level. That claim is not before us now.

The claim now before us first came to Carrier's attention when it received a letter from the Board's Executive Secretary which contained the text of the claim. Although it is based on the same incidents and resultant discharge, the claim is novel or new to Carrier in that the theory of violation it expresses has not been proffered to Carrier in Conference on the property so that Carrier has had an opportunity to consider and respond or

react to it. The opportunity to adjust grievances on the property is a central part of the statutory design. When that opportunity has not been presented, this Board has no alternative to a dismissal of the claim.

Nothing said here is intended to have any affect on Case 320, referred to above, should it reach the Board for adjudication.

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 Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1975.