

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22849
Docket Number MS-22668

George S. Roukis, Referee

PARTIES TO DISPUTE: (James Shea
(
(The Norfolk and Western Railway 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 30 days from the date of this notice covering an unadjusted dispute between me and the Norfolk & Western Railroad involving the question:

The claim of clerk, James Shea, for reinstatement with full seniority from April 1, 1950 and back pay for all wages lost since June 10, 1977 when he was arbitrarily and capriciously removed from service by the Norfolk & Western Railroad without just cause as required under the contract."

OPINION OF BOARD: This Board has carefully reviewed the methodically developed documentary record, particularly, the correspondence relating to this appeal and finds that Petitioner's letter through Counsel, dated August 23, 1978 to the National Railroad Adjustment Board's Executive Secretary expresses an unmistakable intent to file an ex-parte submission that was timely and appropriate within the interpretative context of our decisional law.

In Third Division Award 7813, we held in a conceptually analogous case that:

"The declaration of intention to file a claim with the Board, when received by the Secretary, establishes the Board's jurisdiction."

The ruling is on point with the fact specifics herein, since the aforesaid letter was received by the Board's Executive Secretary on August 28, 1978, one day prior to the expiration of the nine (9) months time limits set forth in Agreement Rule 38. Carrier's highest designated officer formally denied the claim on November 29, 1977, thus establishing August 29, 1978 as the terminal date.

On the other hand, we are confronted with a clear and specific self executing rule, that despite Petitioner's assertion, that it wasn't uniformly enforced, requires an interpretive determination that is faithfully consonant with its unambiguous and peremptory requirements and the principle of Res Adjudicata.

Rule 17(g) which is referenced hereinafter provides that:

"An employe absent on leave, or absent account of personal sickness or disability, who engages in outside employment without written agreement between Management and the General Chairman will be considered out of the service and automatically forfeits all seniority."

It is mandatory and invariant language that places upon an employe a definitive obligation to secure such written acquiescence or suffer the detrimental results that inevitably will follow non compliance. The record is bereft of any evidence that Petitioner acquired written permission to engage in outside employment and we are estopped from our statutorily delimited appellate authority from rewriting this Rule to comport with Petitioner's predicament.

We stated in Third Division Award 20371, a case involving the same rule and the same fundamental issue that:

"The record is clear that Claimant did engage in full-time outside employment; and there is no evidence anywhere in the record, either during the handling on the property or in the Petitioner's submission or rebuttal, to indicate that a written agreement existed to allow Claimant to engage in outside employment while on leave of absence."

We find this holding unequivocally dispositive of the substantive issue before us and accordingly we are compelled to deny this 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 Employes involved in this dispute are respectively Carrier and Employes 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.