

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23023
Docket Number MS-23026

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Michael Hardin
 { 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 our intention to file an ex parte submission on thirty (30) days from the date of this notice covering an adjusted dispute between Mr. Michael Hardin and The Norfolk and Western Railroad involving the question: I was wrongfully terminated from my employment despite eight (8) years of conscientious and trouble-free employment with The Norfolk and Western Railroad. The period for which I was supposedly absent began following the termination of the strike in late September, early November, 1978. On or about October 25, 1978 I sent a letter to the appropriate person at N & W Railroad requesting an educational leave of absence. I had made the same request three (3) previous occasions while working for N & W and each time they had been routinely granted. After the Union went back to work in early October I was fully able to and willing to work. However, by virtue of being on the extra list I realized that it would not be necessarily an everyday job. So it did not surprise me that I did not begin getting calls immediately.

On October 25, 1978 I sent a letter to Mr. Pullen, the Chief trail dispatcher, in Conneaut, Ohio. The purpose for sending that letter was in order to obtain another educational leave. When I did not hear anything I assumed, as on previous occasions, that it had been granted. It was only in late November, 1978, that Mr. Pullen called me at home to inform me that my request had been denied and that I must either resign or report to work. Within a matter of days thereafter, the termination proceeding was initiated by The N & W Railroad.

In addition to the things that have already been described I was also fired in violation of the Union contract and with no just cause.

Because this is a complicated appeal and there are many things that need to be presented by way of testimony and evidence, I am requesting that I be granted an evidentiary hearing at which time I can present that evidence and testimony to the Board."

OPINION OF BOARD: While the record in this case is rather voluminous, the Board cannot reach the merits of the dispute because of jurisdictional issues.

The record is clear that the claim asserted before the Board was not handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes, as required by Section 3, First (1) of the Railway Labor Act, Circular No. 1 of the National Railroad Adjustment Board, and Rule 38 of the applicable collective bargaining agreement.

The Carrier also contends that the claim was not discussed in conference on the property, which has been held to be a mandatory prerequisite to invoking the jurisdiction of this Board. Awards 17166, 19620, 19709, 20574, 20757, 21440.

The claim must 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 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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.