

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23968
Docket Number MS-24451

PARTIES TO DISPUTE: (John D. Caldwell
(
(Northwestern Pacific 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 on (30 days from date of this notice) covering an unadjusted dispute between me and the Northwestern Pacific Railroad involving the question:

I request a hearing between me and Northwestern Pacific Railroad of an unjustified dispute of labor practice. I would like my dispute with the District Federal Court in San Francisco, California and be placed on the court calander as soon as possible."

OPINION OF BOARD: Claimant, John D. Caldwell commenced service with Northwestern Pacific Railroad Company as an Extra Gang Laborer on October 10, 1968. Claimant served notice, as required by rules of the National Railroad Adjustment Board, of his intention to file ex parte submission relating to hearing between himself and the Carrier of an unadjusted dispute of labor practice on December 14, 1981. Both Parties were notified of dispute and hearing was scheduled and held on June 8, 1981, at which the Claimant was present and requested reinstatement to his former position. Carrier filed a submission for consideration by the Board in which they stated: (1) Claimant, by letter dated February 21, 1978, had tendered resignation from employment with the Carrier; and, (2) that no claim of any type had been initiated by Claimant with any Carrier official in accordance with agreed-upon procedures established under Rule 42 of the current Agreement and as required by Section 3, First (i) of the Railway Labor Act.

The Board in questioning Claimant at the hearing developed Claimant had been injured in 1975; had secured a leave of absence in 1976 and subsequently received a settlement for the injury. Claimant denied having knowledge or signing papers indicating a resignation of his employment with Carrier. Claimant further acknowledged that he had not initiated any claim with Carrier prior to his submitting dispute to this Board.

Considering the written record and oral testimony presented at the hearing, the Board has no alternative but to dismiss the claim for failure to properly progress this claim in accordance with Rule 42 of the current Agreement between the Parties as required by Section 3, First (i) of the Railway Labor Act, and Circular No. 1 of the National Railroad Adjustment Board.

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

That hearing as requested was held and concluded;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

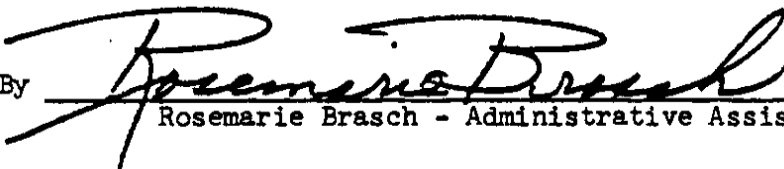
That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of August 1982.

