

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24041
Docket Number MS-24145

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (David O'Rear Tharp and Thomas S. Hughart
(The Baltimore and Ohio Railroad 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 (30) days from date of this notice covering an unadjusted dispute between us and the Baltimore and Ohio Railroad involving the question:

They're violating the contract Rule 6 (Section 2, Paragraph (C) I of Circular #1542.) They're also Violating Rule 40. And contract Scope Addendum 13."

OPINION OF BOARD: Petitioners herein filed grievances on March 26, 1981 claiming that two trackmen with less seniority had been recalled from furlough and they had not been recalled. Following the filing of the grievances, the record indicates that no further handling of the claims on the property took place. Specifically, there is no indication that the dispute was discussed with any officer of the Carrier and clearly there was no discussion with Carrier's highest designated officer.

Section 3, First (i) of the Railway Labor Act provides as follows:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

In addition to the Statute, the Collective Bargaining Agreement applicable to this dispute (the August 21, 1954 National Agreement) provides for procedures, including time limits for various steps, in the processing of grievances. In Article V Section 1 (b) of that Agreement it is specified that appeals from disallowed grievances must be filed in writing within sixty days from the receipt of the disallowance. Failure to conform to this procedure results in the matter being closed.

In the cases involved herein, the Petitioners failed to handle their grievances in accordance with the usual procedures, including discussing the disputes with Carrier's highest designated officer. They also did not conform to the time limits specified for the appeal of disallowed grievances provided for in the 1954 National Agreement. For these reasons, this Board cannot reach the merits of the claims, but must dismiss them for their procedural deficiencies.

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 Claims are barred.

A W A R D

Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November 1982.

