

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul.C. Carter, Referee

Award Number 24360  
Docket Number MS-24584

PARTIES TO DISPUTE: (Shirley Bond  
(Consolidated Rail Corporation

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 or before February 22, 1982 covering an unadjusted dispute between me and Conrail involving the propriety of my discharge on June 24, 1980."

OPINION OF BOARD: Following an investigation conducted under the provisions of the collective bargaining agreement on July 25, 1980, claimant (Petitioner) was dismissed from Carrier's service on August 5, 1980, for the offense:

"Submission of false doctor's certificate to support your absence from duty and secure wages for your absence of June 20, 23 and 24, 1980."

Following Claimant's dismissal, the duly authorized union representative appealed a claim in Petitioner's behalf in the usual manner up to the Senior Director-Labor Relations, the highest designated officer of appeals for the Carrier. The record is clear that the Senior Director-Labor Relations denied the appeal on October 22, 1980. On January 22, 1982, Petitioner filed formal notice of intention to file an ex parte submission with this Division, in accordance with Circular No. 1 of the National Railroad Adjustment Board.

The Carrier cites Rule 43(e) of the collective bargaining agreement, which rule reads:

"(e) An appeal denied in accordance with paragraph (d) shall be considered closed unless, within one (1) year from the date of the decision of the Senior Director-Labor Relations, proceedings are instituted before the National Railroad Adjustment Board or such other board as may be legally substituted therefor under the Railway Labor Act."

The Carrier contends that as proceedings were not instituted before the National Railroad Adjustment Board within the time specified in Rule 43(e) the dispute is not properly before the Board and must be dismissed. This Board has issued numerous awards dismissing claims when rules similar to Rule 43(e) herein were not complied with.

Another reason for dismissal of the dispute is that there is no showing that the material submitted to the Board by the Petitioner, a notarized statement signed by Barbara Newsome and a notarized statement signed by Petitioner, Shirley

M. Bond, were presented to the Carrier prior to submission to this Board. It is well settled by awards of this Board, legion in number, that evidence or issues not raised in the handling of the dispute on the property may not be raised for the first time before the Board. Further, in disputes involving discipline, this Board has consistently and repeatedly held that the parties to such disputes and the Board itself are each and all restricted to the testimony introduced at the disciplinary hearing or investigation.

A copy of the transcript of the disciplinary investigation conducted on July 25, 1980, has been made a part of the record by the Carrier. A review of that transcript shows that Claimant (Petitioner), who was represented at the investigation by a union representative, was not precluded from introducing evidence. The record shows that at the beginning of the hearing the following question was asked of Miss Bond by the conducting officer:

"Miss Bond: Do you and your representative understand that you may present, or have presented on your behalf, any evidence that is pertinent to the offense with which you are charged?"

Miss Bond answered in the affirmative, and stated that she was ready to proceed with the investigation. The hearing officer did refuse Petitioner's representative's request for postponement of the investigation, which request was not made until near the conclusion of same. We see nothing improper in this. If the Petitioner, or her representative at the investigation, believed that additional time was needed to obtain evidence, request for postponement should have been made prior to or at the beginning of the investigation. There was substantial evidence introduced at the investigation in support of the charge against Claimant (Petitioner).

For the foregoing reasons, the claim submitted to the Board by the Petitioner will be dismissed.

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 be dismissed.

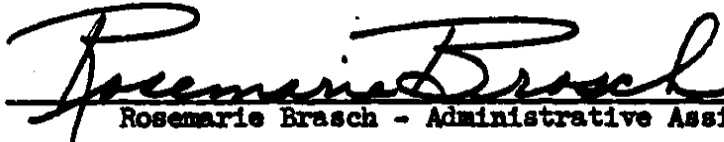
A W A R D

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 13th day of May 1983.