

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24920
Docket Number MS-24121

I. M. Lieberman, Referee

PARTIES TO DISPUTE: (R. T. Lemaster
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"Please consider this letter as my customary thirty (30) day notice of my intentions to file on or about March 4, 1981 my submission with the National Railroad Adjustment Board, Third Division concerning an unadjusted dispute between myself and the Norfolk and Western Railway Company.

The facts in this claim are as follows: Under the date of March 3, 1980 Clerk J. K. Daniels exercised displacement rights on a clerk's position, and held by junior employee G. H. Keplinger in the office of Division Asst. Superintendent D. L. Estepp. Clerk Daniels then made a second displacement under the same date, and displaced Chief Clerk to the Asst. Superintendent Terminal R. T. Lemaster. This granting of a second displacement, without first giving Clerk Daniels his right under Rule 10 (Qualifying) up to forty (40) days in which to qualify, and it is my position that this move on the part of the Carrier to make this second displacement was illegal.

The brotherhood takes the position, that the Carrier showed favoritism, when it let Clerk J. K. Daniels displace Chief Clerk R. T. Lemaster on the Chief Clerk's position to the Assistant Superintendent Terminals, a position that Clerk Daniels had not held for more than twelve (12) years, and then not let Clerk Daniels exercise displacement in the office where he had worked for over the last twelve (12) years.

Please accept this claim in my behalf to be effective Tuesday, March 4, 1980, and to run continuous for each day (Monday through Friday) for eight hours per day, five (5) days per week, and at the monthly rate of pay in the amount of \$1,590.36, these amounts to include any, and all future adjustments. Claimant is also claiming any, and all overtime that Chief Clerk J. K. Daniels might work Monday through Friday, at the monthly rate of pay in the amount of \$1,590.36, and at the rate of time and one half. For each and every Saturday and Sunday, to be effective Saturday, March 8, 1980 and to run continuous, a claim is herewith made for any and all hours overtime worked by Chief Clerk J.K. Daniels, and will be paid at the rate of time and one half, and at the monthly rate of pay in the amount of \$1,590.36, these amounts to include any, and all further adjustments. Holiday overtime will also be made a part of this claim."

OPINION OF BOARD: As a threshold issue Carrier contends that this matter was not handled in the usual manner on the property and hence is barred. The appeal process is at issue and is contained in Rule 38 of the April 1, 1973 Agreement. The procedure established under that Rule for appealing claims such as that herein is as follows:

1. Claim is filed with immediate supervisor designated to receive claim.
2. If declined, the appeal is to the Superintendent.
3. If declined the appeal is to the General Manager.
4. If declined the appeal is to the highest designated officer, in this instance the Vice President-Administration.

The record indicates that Claimant herein never appealed the Superintendent's decision of May 7, 1980 to the General Manager. Therefore, the claim was clearly not handled on the property in the usual manner as required by Section 3, First (i) of the Railway Labor Act. The Board has no choice but to dismiss the claim.

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 is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.