

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25429
Docket Number MS-25623

John E. Cloney, Referee

PARTIES TO DISPUTE: (Donald H. Jeffries
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"My question remains, will I be allowed the rate of the position I now occupy*for a period not exceeding five years following the effective date*of my being placed in a worse position with respect to rate of pay, as a result of the computerization and otherwise transferring of my position of Chief Clerk, E-2, rate of pay \$2,562.79 per month, including COLA (rate on this date) to Baltimore, Maryland?"

OPINION OF BOARD: The record shows that this claim was first presented to the Carrier in a letter from Chief Clerk D. H. Jeffries on March 1, 1982. Manager Car Accounting E. D. Hicks denied the claim by letter dated March 22, 1982.

On May 3, 1982, Chairman B. E. Gibson filed a claim on behalf of Jeffries. On May 21, 1982, Hicks notified Gibson that Jeffries had filed an earlier claim on his own behalf alleging violations of certain Agreements different from those cited by the Organization and stated "you have not appealed the claim as previously presented, but rather you have filed a totally new claim relating to the same contentions". Hicks then declined the claim.

The Carrier contends there was no further handling of the Jeffries claim on the property nor any correspondence with him regarding it until notification from the Board on November 23, 1983, that the claim had been appealed.

Rule 27 1/2 (b) of the applicable Agreement provides in part:

"If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision...the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60 day period for either a decision or appeal..."

Section (c) of Rule 27 1/2 imposes the same time limits upon appeals to each succeeding Officer except that:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by employee or his duly authorized representative before...the National Railroad Adjustment Board...".

The Carrier maintains the claim was never appealed or progressed to the Carriers' highest designated officer and that there was never a conference on the property. Claimant points to six extensions of the time limit for appealing "the decision of Mr. E. D. Hicks...in his letter dated May 21, 1982...".

A long line of Third Division Awards have made clear that rules of an Agreement regarding the progression of claims and grievances must be complied with. There is no evidence of such compliance here. Whatever the effect of the Agreements to extend the time for appeal of the May 21, 1982, denial of claim, it is not that claim which is before this Board. It is the claim made on March 1, 1982, and denied on March 22, 1982, which we have at issue. There is no evidence of an Agreement to extend the appeal time in that claim. This Board notes the Carrier clearly took the position that the May 3, 1982, letter was a new and separate claim. This was never contested by either the Organization or by Jeffries. While Jeffries denies having knowledge of the Carrier's letter stating that position until July 26, 1983, it is clear that the May 3, 1982, letter, a copy of which he received, requests the Carrier to "accept this claim". It does not refer to any prior claim or to any denial of a prior claim. It does not on its face purport to be an appeal of a prior denial. In short, we see nothing to indicate Claimant had been misled by circumstances to believe the denial of his claim was being appealed. We further note apparently no conference on the property has been held. In these circumstances the claim is not properly before this Board.

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.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.