

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25514
Docket Number MS-25527

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Morris Hawtof
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(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

"Reinstatement of an original seniority date of November 13, 1950 as covered by Rule 41 of the agreement between The Baltimore and Ohio Railroad Company and BRAC. The refusal to recognize Rule 41 is, in my opinion, a clear violation of the Clerks Agreement."

OPINION OF BOARD: Claimant Morris Hawtof was first employed by the Carrier in November of 1950 as a Elevator Operator in the Carrier's Office of the Superintendent of Buildings. That position and the position of Office Boy in the Office of the Chief Engineer to which Claimant was subsequently assigned or promoted in 1951 were covered positions under an Agreement (the "Agreement") between the Carrier and the Brotherhood of Railway and Airline Clerks (the "Organization"). Under the Agreement, Claimant held seniority.

Under Rule 41 of the applicable Agreement, which is dated June 4, 1973, an employe who acquired seniority could retain it indefinitely, even after taking a noncovered position. Rule 41 stated in relevant part:

"Employees promoted to an official or fully excepted position on or before September 1, 1980 shall retain and continue to accrue seniority under this agreement."

Rule 29 of the Agreement provides that any employe entitled to retain seniority under Rule 29 must protect it by reviewing the applicable seniority roster on its annual publication and protesting, within a period of sixty days from publication, any inaccuracy. The Rule also states that errors and omissions will be corrected.

In July of 1952, Claimant accepted an official (noncovered) position as Chainman A in Carrier's Office of the Chief Engineer. Between 1952 and August 16, 1981, Claimant was promoted to a series of noncovered positions, the last of which was Project Engineer at Cumberland, Maryland. Effective that date, Claimant's position was relocated to Grafton, West Virginia. Instead of accepting relocation, Claimant chose to revert to a contract position as a Clerk. He was not, however, given credit for his 1950 seniority date. At no time between 1950 and 1981 did Claimant have a break in service.

Beginning in February of 1980, while still in a noncovered position, Claimant inquired as to his seniority status under the Agreement in Seniority District No. 23 and its successor, system-wide roster. He was thereupon advised by the Carrier that, sometime subsequent to 1950, his name had been dropped from the Roster for Seniority District No. 23 for reasons unknown and, because the records were lost, it was not possible to tell when or for what reason his name had been dropped. In response to Claimant's inquiry, the Organization agreed with the Carrier's position. Claimant did not further pursue the inquiry at that time.

In 1983, after Claimant had reverted to a bargaining unit position, the Organization filed and progressed a claim on Claimant's behalf, seeking restoration of his seniority. The Carrier took the position in response to the claim that Claimant's failure to protest the deletion of his name within sixty days of the date of the posting for the year in which his name was deleted from the seniority list precluded Claimant from filing a claim thereafter. It therefore declined the claim.

After one level of appeal, the Organization declined, on the basis of its position in response to Claimant's 1980 inquiry, to take the claim to conference. It so notified Claimant. Claimant then pursued the Organization's determination not to further progress the claim through several steps of its internal appeal process, but without success.

Claimant did not, however, further pursue the claim itself on the property and did not engage with the Carrier in the conference required by Section 3 First (i) of the Railway Labor Act. Rather, after some delay, Claimant filed his claim directly with the Board. In so doing, Claimant denied the Carrier its statutory right to discuss and attempt to resolve the claim and contravened the policy implicit in the statute favoring informal, on-property resolution of disputes by the parties themselves.

Board precedent is clear that compliance with the procedural requirement of the Railway Labor Act for consideration of all claims in conference on the property is a jurisdictional prerequisite for Board consideration of a claim. See, e.g., Third Division Awards 21627 ("Inasmuch as petitioner failed to progress the...claim in accordance with [the] procedure [requiring consideration of a claim in conference], we are barred from consideration of it."), 21440 ("...failure to have a conference is fatal to Petitioner's claim. ***...failure to hold a conference on the property is a serious procedural flaw on which basis the claim must be dismissed [citing numerous prior awards].").

The Board holds that Claimant's diligent pursuit of his internal Organization appeals was not sufficient to discharge his obligation to pursue the claim against the Carrier. Since Claimant failed to conference with the Carrier on the property as required by the Act, the claim must be, and it hereby is, 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 is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Kever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1985.