

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25536  
Docket Number MS-25487

Frances Penn, Referee

(K. M. Hawthorne

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"The Carrier (Chesapeake and Ohio Railway Company) violated Rule 44 of the Clerks' General Agreement as well as others, when they failed to pay employees of the Car Accounting Office, C&O Railway, Huntington, West Virginia rates that were comparable to those paid to employees of the Car Accountant's Office C&O-B&O Railway Company, Baltimore, Md. after the jobs located in Huntington, W. Va. were abolished and reestablished as part of a reorganization effort to further the process of transferring the work of the Huntington Office (Car Accounting) to Baltimore, Maryland (Car Accountant).

We contend that we should have been given the same rate of pay for the same jobs and that not only were the agreement rules violated, but discrimination was also a part of this violation."

OPINION OF BOARD: This claim arises out of the consolidation of Carrier's operations at Huntington, West Virginia, and Baltimore, Maryland, under a Memorandum Agreement between the Carrier and The Brotherhood of Railway, Airline and Steamship Clerks, dated March 3, 1982. The claim was filed by K. M. Hawthorne on behalf of herself and 17 other Clerical employees in the Car Accounting Office in Huntington, West Virginia. These employees contend that under Rule 44 of the Clerks' General Agreement they are entitled to be paid the same rates as those paid to similar employees in the Car Accountants' Office in Baltimore, Maryland. The Carrier contends that the consolidation including the rates of pay of the positions held by the Claimants was properly negotiated between the parties and that, in any case, the handling of this claim was procedurally defective and that the claim is precluded from consideration by this Board.

A review of the way in which this claim was handled convinces this Board that the grievance procedures required by Rule 27 1/2 of the Agreement and by Section 3 First (i) of the Railway Labor Act were not followed. Rule 27 1/2 states in part:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claims or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

"(b) 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. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances.

"(c) The requirements outlined in Sections (a) and (b) of this rule pertaining to appeal by the employe and decision by the Carrier shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. 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 the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may, by agreement in any particular case, extend the 9 months' period herein referred to."

The record shows that these procedural requirements were not followed. After the initial claim in this dispute was filed on September 2, 1982, by the Local Chairman, Ms. Hawthorne appealed directly to the Board. Thus, the claim was not handled through the various levels of appeal as it should have been. In addition, no conference was held on the property as is required. Numerous Awards issued by this Division make it clear that this Board will not consider a claim which is not handled on this property in accordance with applicable Agreement rules and the applicable statutory requirements. (See Third Division Awards No. 23581, No. 19571, and No. 11896.) Since this claim was not handled in accordance with the required procedures, the Board must dismiss it.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 2, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred.

Award Number 25536  
Docket Number MS-25487


Page 3

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.