NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25699

THIRD DIVISION Docket Number MS-25648

George S. Roukis, Referee

PARTIES TO DISPUTE: (Elizabeth I. Dinkel
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"This is a continuing time claim for pay at the rate of $1739.40 a month commencing November 23, 1981 until this case is adjudicated.

This claim is made in addition to any and all monies received by me during this period of time account improper recall of M. J. Dalphond under the provisions of Rule 18 as well as others."

OPINION OF BOARD: In this dispute, Petitioner protested the recall of another employee when said employee was sent a recall notice on October 30, 1981, and reinstated with a 1949 service date on the master roster provided by the 1981 Agreement. It is Petitioner's position that the other employee previously forfeited all seniority rights, pursuant to Rule 18(e-2) of the June 1, 1975 Agreement between the Union Pacific Railroad and the Brotherhood of Railway, Airline Clerks when in 1975, said employee was furloughed and failed to respond to recall notices. Petitioner argues Carrier violated the clear intent of Rule 4 of the 1981 Agreement between the aforesaid parties when it included the other employee's forfeited seniority in determining seniority status on the newly established master roster. Petitioner avers that the other employee's failure to return to the former seniority district, or alternatively, obtain a leave of absence in accordance with Rule 15(1) of the June 1, 1975 Agreement placed the other employee in furloughed status and subject to the explicit requirements of Rule 18(e-2). Accordingly, Petitioner maintains that failing to respond to the 1975 recall notice, the other employee could not later be recalled to fill a new bulletined position or vacancy with the 1949 seniority standing.

Carrier argues the petition before this Board is procedurally defective, since Petitioner never appealed the claim to the highest designated officer consistent with Rule 46 of the May 16, 1981 Controlling Agreement and Section 153, First (i) of the Railway Labor Act of 1934, as amended. In particular, it notes that following Carrier's denial of her claim on December 11, 1982, Petitioner never appealed the rejected claim to the highest designated Carrier officer. Consequently, it asserts the claim is moot.

Correlatively, with respect to the substantive question posed by Petitioner, namely whether the other employee was improperly granted seniority rights extending back to 1949, Carrier observes the other employee was in furloughed status on two seniority rosters in 1975 (i.e., Rosters 39 and 71) and Roster 39 was dovetailed into the new master roster in 1981. It maintains that Roster 39 was a defunct roster, but seniority rights were nevertheless

protected since by agreement with the BRAC Organization and in accordance with Rule 18 (d-2) of the Controlling Agreement, an employee on a defunct roster could not lose his seniority rights. Inasmuch as the other employee forfeited seniority rights only under Roster 71, it is Carrier's position that said employee's accumulated seniority rights under Roster 39 were not affected.

In our review of this case, we concur with Carrier's position on the procedural objections raised. Careful analysis of the dispute's handling on the property clearly indicates Petitioner did not appeal the claim to Carrier's highest designated officer consistent with Rule 46 and Section 153, First (i) of the Railway Labor Act, 1934 as amended. This was a critical defect. As we consistently stated in past decisions dealing with similarly articulated procedural questions, we are estopped from exercising equity judicial authority and constrained to comply with the precise appellate procedures set forth in the aforesaid federal statute and the parties applicable collective Agreement. In essence, by law, we are required to consider only those claims that were not able to be adjusted pursuant to the grievance appeal steps of the governing labor Agreement. The last step of Rule 46 requiring an appeal up to and including the highest designated Carrier Officer was not observed herein and, as such, the instant petition is without standing before the Board. Section 153, First (i) of the Railway Labor Act, 1934, as amended, is explicit and it is delineated for reference purposes as follows:

> "[grievances] shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition ... by either party to the appropriate division of the Adjustment Board...."

In this connection, we hasten to point out that we would be vitiating the orderly dispute resolution process provided by statute and the parties own collective Agreement if we permitted deviation from this strict standard to occur. It would create needless confusion and eliminate any possibility for the parties to resolve by themselves asserted claims arising out of the intepretation or application of the collective Agreement. For these reasons, we are compelled to dismiss the claim. (See Third Division Award Nos. 25298, 25345, 25346, 25514.)

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this disupte are respectively Carrier and Employes 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 14th day of November 1985.