

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25931

Docket Number MS-25685

George S. Roukis, Referee

(Richard J. Picard

PARTIES TO DISPUTE: (

(Kansas City Terminal Railway Company

STATEMENT OF CLAIM:

"My claim is for protected rate of pay, amount \$2,504.83, per month on a continuing basis, beginning with the month of March 1983, until such time as this matter is resolved - including any accumulated vacation pay which would result from this claim. The reason for submission of this claim is due to my being denied the right, under Rule 25 of the Brotherhood of Railway Clerks Agreement, to displace junior employees when my position with the Rock Island Railroad was abolished at close of business February 28, 1983. At least one of the eight junior employees, on which displacement was attempted, is still employed as of April 30, 1984 - 14 months later.

With vacation pay that would have been earned if I was still employed the amount of this claim is valued at over \$40,000.00. This does not even take into account the loss I have suffered on medical, dental and life insurance plans which it was necessary to purchase after being furloughed."

OPINION OF BOARD: The Interstate Commerce Commission entered Order No. 1398 on September 26, 1979, requiring Carrier to operate nearly the entire system of the Chicago, Rock Island and Pacific Railroad Company. The Order was later supplemented and amended by related Commission decisions and orders, which in effect, required Carrier to hire virtually all existing employees of the Rock Island for directed service operations for the period, October 5, 1979, through March 31, 1980. Operating and Maintenance employees were released to their former status upon termination of actual railroad operations on March 31, 1980, but clerical employees were retained to provide accounting and claim settlement services. Their continuation was predicated upon a descending need for services and thus, by March 31, 1983, Carrier did not retain any clerical employees. In point of fact, Carrier's authority to retain Rock Island clerical employees expired on this date. Claimant was a Rock Island employee who was retained to perform services consistent with the aforesaid requirements and was retained beyond March 31, 1980. His position was abolished and he was released from the Carrier's service on February 28, 1983, approximately one month before the accounting and claim-handling operation was discontinued.

In defense of his Claim, Claimant argues that Carrier violated Rule 25 of the Controlling Agreement, since he was not permitted to exercise his seniority right to positions still occupied by junior employees. In effect, he asserts that irrespective of the length of time a position exists, he was nevertheless entitled to exercise his seniority rights to displace less senior employees. He further notes that one of the positions for which he placed a "bump" did not terminate on March 31, 1983, but was continued beyond the specified March 31, 1983, expiration date. He avers that even if said

position was not continued under the direct employment aegis of Carrier, but instead continued as a trustee position, he would still be employed had he been permitted to exercise his seniority. His formal Claim was filed on April 29, 1983.

Carrier disputes the Claim on several procedural grounds and requests that it be summarily dismissed. It argues that he failed to institute proceedings before the National Railroad Adjustment Board within nine months from the date the Claim was effectively denied by Carrier's highest designated Officer and also that he did not attempt to resolve the Claim at a conference on the property. As such, it maintains that the claim is procedurally defective and not properly before the Board. Further, it asserts that he failed to establish that he was qualified and correlatively entitled to exercise seniority to a position which itself was scheduled for abolishment. It observes that under the orders and directives of the Interstate Commerce Commission, it was prohibited from paying claims for labor protection after the termination of directed service operations (March 31, 1980).

In our review of this case, we are constrained to dismiss the Claim on procedural grounds. Consistent with our explicit appellate authority under the Railway Labor Act, specifically, Section 153, First (i), we are required to consider only those Claims that were not able to be adjudicated in accordance with the grievance appeal steps of the applicable Collective Agreement. We have maintained a strict fidelity to this pivotal jurisdictional standard and have dismissed Claims where they have not been properly handled or appealed in timely fashion to the Board. In the instant case, the Claim was not conferenced on the property, which was a serious defect by itself, but it was also filed with the Board some two and one half months after the appeals expiration date. The Claim was denied by Carrier's highest designated Officer on May 11, 1983, and it should have been appealed to the Board by February 11, 1984. Instead, the Notice of Intent to file an Ex Parte Submission was dated April 30, 1984. On its face, this might not appear unduly late, but it must be remembered that Claimant had nine months to determine whether to appeal Carrier's final on situs determination. It is not our role to interpose our interpretation or judgment as to why he waited so long. He had more than ample time to determine his course of action. To compound this serious defect, the Claim was not conferenced in the usual manner prior to its submission to the Board. (See Third Division Awards Nos. 25298, 25345, 25346.) We will not address the substantive aspects of the Claim, except to note that, at best, had he been improperly denied the right to exercise his seniority when his position was abolished on February 28, 1983, he would have worked until March 31, 1983. Beyond that date he was not entitled to labor protection under the June 2, 1982, ICC order and it is problematical whether he would have been rolled over. After the directed service railroad operations were terminated on March 31, 1983, employees whose jobs were abolished were released to their former status as Rock Island employees. The Rock Island was under a Bankruptcy Trustee at that time.

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 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

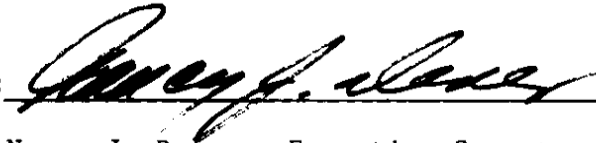
That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.