

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26607
Docket Number MS-26435

Gil Vernon, Referee

(Osceola Johnson

PARTIES TO DISPUTE: (

(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"I filed a claim of discrimination with the Human Relations Commission against the E.J. & E. Railway Company on their practice of laying off all of the painters and keeping the foreman and working him as a painter.

I came over to the B&B Department in October, 1976 on the seniority modification agreement with painter seniority (06/06/66). I am the only black in the B&B Department. Every foreman in the B&B Department during every lay-off period has kept at least one in his gang to work except the paint gang. The paint foreman, Mr. Homan (#67019) is a 'protected employee'. As a foreman, Mr. Homan is the only foreman in the B&B Department who has to perform work. By Mr. Homan performing painter work, he is in violation of the contract. It also is against OSHA Safety Rules for a man to be working by himself. My supervisor, Jim Williams, has a practice in the B&B Department of working people on a day-to-day basis to keep them working some days and to keep their insurance going. Since I have been in the B&B Department and on lay-off status, I have not worked one day of this practice. When I was on sick leave and Dave Gibson was laid-off, Jim Williams let him work as a painter when Mr. Homan went on vacation. When I came off sick leave and went on lay-off status, I have not been called off lay-off to work one day when Mr. Homan goes on vacation. E.J. & E. Railway purchased a trucking outfit. There were some truck-driver and crane operator jobs. The laid-off white crane operators were notified and given crane operator jobs in the trucking company. I am the only black who has rights as a crane operator and was laid off. I was not notified of job openings nor was I asked if I would like to work the trucking company. The E.J. & E. Railway Company and my supervisor, Jim Williams, are denying me a chance to work and make a living because I am black and they do not want any blacks in the B&B Department.

For the last four (4) years, I worked about a month or two (2) a year and then get laid off. They work younger men in the carpenter and pipe gang that have less company seniority than I do and lay off all the painters and make the painter foreman perform painter work so that they keep me from working and keep the department all white.

I have rights in the B&B Department as a painter and crane operator only. EJ&E Railway Company works the foreman as a painter and I am not notified of the crane operator jobs in the trucking company. These practice

OPINION OF BOARD: A review of the record indicates that the Claim before the Board was never filed properly with the Carrier. Rule 59 states that all claims or grievances must be submitted within 60 days from the date of their occurrence to the Carrier Official designated to handle such claims. Rule 59(a) is most relevant and reads as follows:

"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 claim 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 contention of the Carrier as to other similar claims or grievances."

The Claimant's failure to follow the procedures established in Rule 59 is fatal since the Rules of Organization and Procedure issued by the National Railroad Adjustment Board as Circular No. 1 dated October 10, 1934 states in pertinent part:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provision of the Railway Labor Act, approved June 21, 1934."

Section 3, First (i) of the Act mandates that all disputes between an employee and a Carrier:

". . . be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such dispute. . . ."

It is clear the Claim was not handled in the "usual manner" which is set forth in Rule 59. Accordingly, the Claim must be dismissed for lack of jurisdiction. This is consistent with the well established Board precedent under similar facts.

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

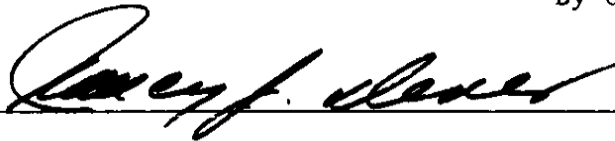
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.