

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Woodie A. Lewis

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"My disput arise from the time I was layed off in Feburary 13, 1982 and since then I have not been able to get any kind of answer from my union man except their is nothing going on but, there have been jobs posted in the Suburban Division Ticket Office and when I learn about them they were already taken. My union man name is Tom Zibel and I feel that he have been given me the run-around every since I was layed off. I got hurt in May 1980 I need 3 operations on my right hand. I did not sue the company but settled with them. I could not work as an janitor because when I return to the company my hand was still sore and I already had two operations and I had one more to under go so, they put me into Freight Cairms Dept. I worked there from October, 1981 until Feburary, 1982. I felt that I was discriminate, because when I came back to work I was not able to work as a janitor, at that time because I needed another operation so, the company put me in the Freight Claims Dept. After I worked in the Freight Dept I had to under go my last operation and I worked there until I was layed off in 1982. The Supervisor by the name of Mrs. Trudy Hornor told me they abolished the job I was working. My union man Tom Zibel told me when I call him on the phone that I should not be layed off so, I feel that if the union man said I should not be layed off then I sould be working. I feel like after I got hurt on the job the company did not need me any more." (sic)

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The record reveals that the matter the Claimant has placed before the Board was never filed as a claim with the Carrier on the property as required by Rule 35 of the Labor Agreement under which the Claimant worked. Rule 35 of the BRAC Agreement, which governs the time limits for claims, gives the employee or his representative sixty days from the date of the related incident to file the claim in writing:

- "1. 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 contentions of the Carrier as to other similar claims or grievances."

As the Claimant was laid off on February 13, 1982, and he did not submit any claim within 60 days, this matter before the Board is in violation of the time limits.

This is critical since the Railway Labor Act requires that all disputes over the interpretation or application of an agreement be handled on the property in accordance with the labor agreement, as a prerequisite to submission to this Board.

Section 3, First (1) of the Act states:

- "(1) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretations or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, 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 dispute may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Because the instant matter was not handled on Carrier's property in accordance with Rule 35 of the BRAC Agreement the Board is without jurisdiction to address the merits of the claim. This is in line with long standing precedent. For instance see recent Third Division Awards 25676 and 23466.

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 17th day of May 1988.