

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(J. E. Honeycutt
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "In the assignment of the Position of Chief Clerk, at the Diesel Parts Store, Springfield, Mo. Did the Burlington Northern Railroad comply with all Rules and Laws pertaining thereto?"

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.

At the relevant time, Claimant held a clerk's position at Springfield, Missouri. After Claimant was displaced from his regular assignment, Claimant notified the Carrier on November 4, 1983 that he desired to exercise his seniority rights to displace a junior clerk from the Chief Clerk's position at the Carrier's Springfield, Missouri Diesel Parts Store.

On December 22, 1983, Claimant filed the instant claim which was denied by the Material Manager on January 10, 1984. On March 1, 1984, Claimant appealed to the Director of Labor Relations, which appeal was denied on April 30, 1984. By letter dated November 7, 1985, Claimant submitted the claim to this Board.

Initially, we lack jurisdiction to consider the claim as presented. It appears from the record that no conference was held on the property prior to submitting the claim to this Board. A conference is a jurisdictional prerequisite for us to consider the merits of the claim. See Third Division Awards 26749, 23448, 23023, 22646, 22629, 22311.

Claimant's November 7, 1985, appeal to this Board was made over 18 months after the Carrier's April 30, 1984, denial of his claim. Rule 59C of the Agreement provides that unless proceedings are instituted before this Board within 9 months from the Carrier's April 30, 1984, denial, the claim

"shall be barred." Claimant's institution of proceedings before this Board was therefore untimely. See Fourth Division Awards 4315, 3476, 3045, 3016. Even assuming that Claimant requested an extension of time from the Carrier as he asserts, such a request does not change the result since there was no agreement for an extension as required by Rule 59C.

Moreover, we note that Claimant seeks to expand the claim in his Submission. Claimant not only argues that the refusal to let him bump into the Chief Clerk position was violative of the Agreement, but Claimant apparently also attacks the initial filling of that position. It is well-established that new material and arguments or amendments to the claim cannot be added after the claim is submitted to this Board. But again, even assuming that the initial filling of the position can be considered properly part of the claim before us, since that position was filled at a time more than 60 days prior to the filing of the claim (indeed, according to the Carrier, several years prior to the filing of the claim), such a protest is also untimely under Rule 59A ("All claims or grievances must be presented in writing ... within 60 days from the date of the occurrence on which the claim or grievance is based.").

However, notwithstanding the severe jurisdictional infirmities, even assuming we could consider the merits of the dispute, we would deny the claim. The Diesel Parts Store Chief Clerk position that Claimant sought to displace into was designated by the parties in the Agreement as a "PE" position. Appendix O, Section 4 of the Agreement provides:

"Those identified as 'PE' will be partially exempt from the Agreement and subject to all rules except those covering promotion, assignment, and displacement."

Thus, the position into which Claimant sought to displace the junior clerk was not subject to displacement.

Finally, Claimant's allegations of violations of federal law are not properly before this Board. We have no authority to interpret the statutes cited by Claimant.

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 17th day of January 1989.