

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44613
Docket No. SG-46316
22-3-NRAB-00003-200825**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

PARTIES TO DISPUTE: (
(BROTHERHOOD OF RAILROAD SIGNALMEN
(GRAND TRUNK WESTERN RAILROAD)

STATEMENT OF CLAIM:

“Claim on behalf of A.S. Porter, for correction of his personnel file to show a demotion rather than termination; account Carrier improperly classified his demotion from management on July 26, 2018, as a termination in his personal file which was discovered by the Claimant on March 28, 2019. Carrier's File No. LBRR-20190517-143368. General Chairman's File No. 19-11-GTW. BRS File Case No. 16196-GTW. NMB Code No. 106.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant is currently a signal maintenance employee for the Carrier. Prior to holding this position, the Claimant was employed by the Illinois Central Railroad Company in a management position for approximately eight years. On July 26, 2018, the Claimant was dismissed from his employment with the Illinois Central Railroad,

and was given a letter stating, “Your employment with Illinois Central Railroad Company is terminated effective immediately.”

The Claimant had maintained his BRS seniority during his employment on the ICRR, thus allowing him to return to a covered position under the GTW Agreement. Therefore, following his dismissal from the ICRR, he exercised his seniority on the GTW by displacing another employee for his current position on or about January 9, 2019.

On March 28, 2019, the Claimant reviewed his personnel file and found a July 26, 2018, letter notifying him of his termination. On behalf of the Claimant, the Organization requested removal of the termination letter and replacement with a notification of his demotion. The Carrier denied the request.

By letter dated April 18, 2019, the Organization presented a claim to the Carrier which was denied by letter dated June 13, 2019. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Organization contends that the Carrier failed to produce any evidence to justify a termination letter in the Claimant’s personnel file, when he remains employed by the Carrier. The Organization contends that the Claimant’s file should reflect that he was demoted, and the Carrier arbitrarily refuses to correct the record.

The Carrier contends that the original claim was filed outside of the time limits set forth in Rule 43 of the Collective Agreement. Rule 43 clearly states, “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.” The Claimant was notified of the Carrier’s termination of his employment on July 26, 2018, but this claim was not filed until April 18, 2019.

With respect to the merits, the Carrier contends that the Organization has failed to present any evidence to support its contention that the Agreement was violated when it issued a letter of termination to the Claimant. For instance, the Carrier contends that the Organization did not even present the letter in the record. The Carrier contends that at the time the Claimant was terminated from the ICRR, he was a management employee and not an employee covered under the GTW Agreement for unionized employees. The Carrier contends that the Organization has

failed to show how the characterization of the adverse action as a termination rather than as a demotion caused harm.

Rule 43(a) of the parties' Agreement provides,

- (a) 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.

The Claimant was notified in writing by the ICRR that he had been terminated from his management position on July 26, 2018. After a review of his personnel file in March 2019, this claim was filed on April 18, 2019. Although this was less than sixty days after the review of the file, the occurrence on which the claim is based is the issuance of the termination letter. That event took place more than sixty days before the claim was filed. Thus, under the negotiated language of the parties' Agreement, the claim was untimely. We have no option other than to dismiss the claim without reaching its merits.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of October 2021.