

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22629
Docket Number MS-22380

James F. Searce, Referee

PARTIES TO DISPUTE: (Raymond T. Maki
(Duluth, Missabe and Iron Range
(Railway Company

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board of my intention to file an ex parte submission on March 7, 1978 covering an unadjusted dispute between me and the DM&IR Ry Co involving the question,

My claim is the Carrier's denial of not allowing me to exercise my seniority to displace a junior employee Mr. J. Economy Supvr Agent, Missabe Jct - Endion Agency during a Reduction of Forces caused by a strike of the United Steal Workers. This denial caused me to have loss of wages from the period from Oct 19 1977 thru Dec 16 1977, the period of my unemployment."

OPINION OF BOARD: During the last five months of 1977 carrier's operations were affected by a strike. The carrier abolished numerous positions because of a general lack of traffic. Claimant was displaced from his Agent's position and attempted to displace onto a "Class 2 Position." He was denied the right to displace onto this position on the basis that the position was an exempt position which "may be filled without regard to seniority rules." Following the denial of the displacement claimant filed a claim with the supervisor of payroll accounting, appealed the claim to the Division Superintendent and then further appealed the claim to this Board.

Before the Board the carrier argues that the claim must be dismissed under the provisions of Section 3 first (i) of the Railway Labor Act because (a) it was not at any time appealed to the carrier's highest designated official and (b) the claim was not at any time discussed in conference on the property prior to the initiation of proceedings before the Board. The carrier also argues that the claim is without merit.

The carrier's jurisdictional arguments are well placed. Either the failure to appeal to the highest designated official or the failure to hold a conference prior to appeal to this Board have been deemed sufficient to prevent our consideration of a case on its merits. In this instance the claim will be dismissed.

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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 **be** dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, -Illinois, this **9th** day of **November 1979.**

