

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24470**  
Docket Number MS-24275

George S. Roukis, Referee

PARTIES TO DISPUTE: { (David W. Ratcliff  
Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Please consider this letter **as** my customary **30-day** notice of my intent to file within **30** days my **Ex-parte** submission with the National Railroad Adjustment Board, Third Division, concerning an unadjusted **dispute** between the Norfolk and Western Railway and myself.

The facts in this claim are as follows. On March 3, 1980 Clerk J. K. Daniels exercised displacement **rights** on a clerical position held by junior employee G. H. **Keplinger** in the office of Division Assistant Superintendent, D. L. **Estep**. Clerk Daniels was denied rights of displacement to this position, and then made a second displacement under the **same** date and displaced Chief Clerk to the Assistant Superintendent Terminal R. T. **Lemaster**. Lemaster in turn displaced Chief Clerk to the Division Engineer-Maintenance D. W. Patcliff. This granting of **a** second displacement of Clerk Daniels, without first giving him his right to a qualifying period of forty (**40**) days under Rule 10 of the current Master Agreement; end it is my position that this move on the part of the Carrier to make this second displacement was illegal.

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Please accept this claim in my behalf to be effective April 3, 1980 and to run continuous for each day (Monday thru Friday) for eight hours per day, five days per week at the monthly rate of **\$1682.45** to include any and all future adjustments, any and all overtime worked by Chief Clerk R. T. **Lemaster Monday** thru Friday, Saturday and **Sunday at the time** and one-half rate of \$1682.45, also to include **any** and all adjustments."

OPINION OF BOARD: In reviewing this dispute, we concur with Carrier's position that the claim before us is **materially** different from the claim handled on the property. We cannot agree with Claimant's defensive averment that **it** is essentially de **minimus** in nature. His **rearticulation** of the original claim filed represents a substantive, not **nuancial** modification and **is** de facto **a new claim**. This amended claim was not handled on the property in accordance **with the parties' prescribed** grievance appeals procedures and **as** such, we are precluded **by the mandatory** language of Circular **No. 1** of **our** Rules from considering it. This Rule requires:

"No petition shall be considered by any **Division** of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1935."

It is in accordance with Section 3, First (i) of the Railway Labor Act, as amended, which reads, in part, as follows:

"(i) **The** disputes shall be handled in the usual manner up to and including the chief operating officer of the Carrier designated to **handle** such disputes."

Moreover, the decisional law of this question affirms **our** determination. In Third Division Award No. 15384, which conceptually parallels this case, we stated in **pertinent part** that:

"It is also clear that the claim presented to the Board is not the same **claim** that was handled on the property. In fact, the claim was amended after its submission to the Board. We have consistently held that where there is a substantial variance between the claim handled on the property, and that presented to the Board, we cannot resolve the dispute. Since this claim was not handled in the usual **manner** as required by Section 3, First (i) of the **Railway** Labor Act, the claim must be dismissed." (See also Third Division Awards Nos. 14258, 13235, 12554, 11212, 11346, 11910, 12352 and 13659 among others.)

The instant codified **claim** was not handled on the property pursuant to the Agreement's applicable procedures and we must dismiss it.

**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 Employes involved in this dispute **are** respectively Carrier and Employes 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.



NATIONALRAIROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie **Brasch** - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1983.