

Referee Irwin M. Lieberman

PARTIES Andrew L. Essary
 TO

DISPUTE: Chicago and North Western Transportation Company

STATEMENT Whether or not the dismissal from service of petitioner by the
OF CLAIM: Carrier on August 1, 1974 was with just cause, made in bad faith,
 was discriminatory, wrongful, arbitrary and contrary to the
 collective bargaining agreement covering the carrier and peitioner,
 Andrew L. Essary.OPINION Review of the record in this case discloses that the claim was
OF BOARD: not handled on the property in accordance with the rule contained
 in the applicable Agreement, Rule 19. That rule provides, inter
 alia, for a thirty day time limit for the filing of appeals and
 also processing of appeals ".....up to and including the highest officer
 designated by the company, to whom such appeals may be made." Confusion or
 lack of experience cannot excuse lack of conformity with the rule; further,
 it is evident that Claimant was represented at the investigatory hearing by
 an official of the Yardmasters' Organization which is a party to the Agreement.
 It is reasonable to assume that the proper procedure was known at least to
 Claimant's representative. (See Award 2581, Second Division Awards 6506,
 6555 among others).

As an absolute prerequisite for consideration by this Board a claim must be handled on the property in the usual manner up to and including the chief operating officer of the Carrier; this is mandatory as provided in Section 3, First (i) of the Railway Labor Act as amended. Since the record shows that the dispute was not handled in accordance with Rule 19, as indicated above, the Board has no jurisdiction over the dispute and may not consider the merits.

FINDINGS:

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

The carrier and the employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute were granted the privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Executive Secretary
National Railroad Adjustment Board

By: Jacques J. Leves
Assistant Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1975