

Parties to Dispute: (Mr. John G. Kidwell
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(Penn Central Transportation Company

Dispute: Claim of Employees:

...Charge being made to Penn Central Company System Shops, Beech Grove, Indiana. Brief Description of dispute: This notice is issued in connection with the Charge(S) Violation of Rule's 32, 33, 34, 35 of agreement of International Brotherhood of Electrical Workers. Violation of Notice of Trial Rule 6 of the I.B.E.W. I Charge inordinate and excessive delay, and I charge Violation of my Rights and Discrimination against an employee of Penn Central Transportation Company. I Charge Violation of Circular No. 1 of National Railroad Adjustment Board, "Organization and Certain Rules of Procedure", in accordance with the provisions of the Railway Labor Act, approved June 21, 1934. To date I have been held out of service from 11:30 A.M. May 3, 1974 and I charge Hardship and my right to work.

Findings:

The Second 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 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.

Parties to said dispute waived right of appearance at hearing thereon.

Petitioner under date of June 10, 1974, filed a letter of intent with this Division of the Board which reads in part:

"Notification is hereby given of intention to file an Ex Parte submission within thirty days from the above date."

Petitioner failed to file his submission or rebuttal to the Carrier's submission. The Carrier in their submission state:

"Carrier submits that Petitioner's claim is procedurally defective and must be dismissed by the Board. Carrier's specific

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objection is that prior to Petitioner's notice of intent dated July 10, 1974, to file an ex parte submission with the Board, neither Petitioner nor anyone acting on his behalf had progressed the claim up to and including the Carrier's final appeal officer as required by applicable Agreement provisions and specific requirements of Section 3, First (i) of the Railway Labor Act."

Section 3, First (i) of the Railway Labor Act reads in part:

"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..."

Circular No. 1 of the Board reads in part:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of this Railway Labor Act..."

This Board is of the opinion that it must follow the mandate of scores of awards of this Board that requires procedural compliance with Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the NRAB. Failure to so comply compels a dismissal of the claim. The record in this dispute is clear that no claim was ever presented to Carrier or progressed in the usual manner as required, and the Board has no alternative but to dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of October, 1975.