

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

Parties to Dispute: (Thurman Eugene Young
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

Petitioner requests determination as to whether The Atchison, Topeka and Santa Fe Railway Company violated Rule 40(a), (b), (c) of the Agreement between The Atchison, Topeka and Santa Fe Railway Company and its employees represented by International Association of Machinists and Aerospace Workers AFL-CIO (the "Agreement"), to wit:

"Discipline Rule 40

(a) No employee shall be disciplined without first being given a fair and impartial investigation which shall be promptly held, unless such employee shall accept dismissal or other discipline in writing and waive formal investigation. Suspension for flagrant rules violations pending an investigation shall not constitute a violation of this rule. An employee involved in a formal investigation may be represented thereat, if he so desires, by a duly accredited representative of his craft and by one member of the Shop Committee, only one of whom may interrogate witnesses.

(b) Prior to the investigation, the employee alleged to be at fault shall be apprised of the precise nature of the charge sufficiently in advance of the time set for investigation to allow reasonable opportunity to secure the presence of necessary witnesses.

(c) A copy of the transcript of the evidence taken at a formal investigation shall be furnished to the employee or his representative."

Petitioner further requests determination as to whether The Atchison, Topeka and Santa Fe Railway Company violated Rule 31C. of its General Rules for the Guidance of Employees, Form 2626 Standard, Revised 1978, to wit:

"C. No discipline will be noted against an employee's record without notice to the person affected, and an opportunity given for formal investigation and defense."

Findings:

The Second 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.

Carrier moves to dismiss for the reason that the claim is not properly before the Board since Claimant failed to exhaust appeals on the property before filing with the Board. It is clear from the record that there is merit to Carrier's argument and that Claimant's Ex Parte Submission to the Board was premature. The Railway Labor Act, Rule 39 of the Agreement, and Circular No. 1 require that claims be filed, progressed, and conferenced on the property prior to submission to the Board.

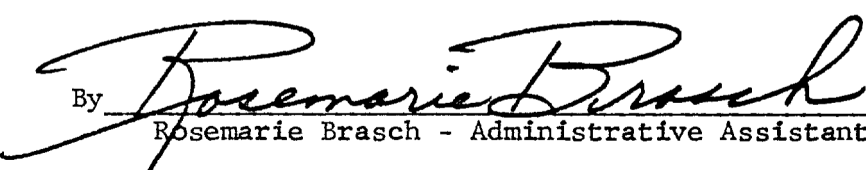
A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of May, 1983.