

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13609
Docket No. 13491-I
01-2-99-2-93**

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Richard A. Schmitz
PARTIES TO DISPUTE: (
(Montana Rail Link**

STATEMENT OF CLAIM:

“ . . . I Richard A. Schmitz am writing this letter of intent to file a submission to my case with Montana Rail Link. I don’t feel I should be punched (sic) for trying to help my self I have a disability . . . I feel I am entitled to my full pay and this should be taken off my record.”

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.

Hearing was convened at 10:00 A.M. on March 21, 2001. Neither the Claimant nor the Carrier appeared and at 11:30 A.M., the record was declared closed.

The record in this case shows that, after an incident on October 11, 1998, in which the Claimant and another employee were allegedly involved in an altercation, both employees were directed to attend an Investigation concerning the incident. Following the Hearing, which took place on October 16, 1998, the Claimant was issued a 30-day suspension.

The Claimant and his Organization, the National Conference of Fireman and Oilers, appealed the disciplinary action without resolution. The Claimant individually progressed the matter to the Board for final adjudication.

As a threshold matter, however, it is evident that the Claimant did not comply with the applicable claim handling procedures under the parties' collective bargaining Agreement, and therefore, the Board is barred from consideration of the claim.

Under Rule 13(E) of the applicable Agreement, discipline claims which are not resolved in conference must be submitted to arbitration within 30 calendar days of the conference date. In the instant case, the Claimant's representative requested a conference on his claim by letter dated December 15, 1998. A conference was held in late December, within several days of the Carrier's receipt of the conference request.

By letter dated January 25, 1998, the Organization advised the Claimant that it would not progress his claim but that he had the right to do so individually. The Organization further advised the Claimant of the importance of conforming to the time limits under the Agreement in submitting his appeal.

The Claimant's notice was not received by the Board until September 13, 1999, far beyond the applicable 30 day time limit. The time limitations, not complied with here, act as a summary bar to consideration of this claim on the merits. Since the claim is not properly before the Board, it must be dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 4th day of June, 2001.