

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13978
Docket No. 13855
08-2 NRAB-00002-080004

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(K.E. Gregory, Jr.

PARTIES TO DISPUTE: (

(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

- “1. That the Norfolk Southern Railway is in violation of the scope rule of the Agreement between the Norfolk and Western Railway Company and Telephone Maintainers, Lineman and Helpers. This violation being the Carrier’s assignment of work belonging to the BRS to Communications workers in the I.B.E.W.**

- 2. Also, the Carrier is in violation of Rule 4, Paragraph (e), in its denial of overtime to K. E. Gregory, Jr.. for repairs made to a BCP, (Signal Data Radio), located at Jewell Ridge, VA.”**

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.

The record before the Board establishes that Claimant Gregory is an IBEW monthly-rated employee assigned as an IBEW Communications Electronic Technician and, as such, compensated monthly for "all service performed." Here he claims overtime pay for performing emergency service after his regular hours in troubleshooting and repairing equipment on February 28, 2007.

On the afternoon of February 28, 2007, Claimant was asked to respond to a trouble call involving the base communications package at Jewell Ridge, West Virginia, a location within his regular assigned territory. He drove an hour and one-half to the location, repaired the unit and drove home, arriving at 6:30 p.m. After then requesting and being denied two and one-half hours at overtime rates for his efforts, on March 9, 2007, he submitted this claim, asserting that he had performed service beyond his normal quitting time of 4:00 p.m.

The claim was initially declined on March 20, 2007 by System Manger Administration Barbour. Following Claimant's May 3, 2007 appeal, Carrier's Director Labor Relations A. J. Licate rejected it again on June 22, 2007. Claimant then corresponded with Carrier on July 23, 2007 indicating that it should make arrangements for a conference concerning the issue if it so chose, and advising that he intended to file the dispute with the Second Division of the National Railroad Adjustment Board. By letter dated August 13, 2007, Carrier's Assistant Director Labor Relations K. K. Ashley replied in part as follows:

"...the mandatory requirements of Section 2, Second and Section 3, First (i) of the Railway Labor Act (RLA) require that the parties to a dispute consider, and if possible resolve, the dispute in conference on the property prior to referring the issue to the National Railroad Adjustment Board (NRAB) for resolution. [Citations omitted.] In conjunction with the preceding, it is suggested that the parties 'conference' this claim at 9:00 a.m. on September 4, 2007, at the Carrier's Labor Relations' Conference Room, 223 East City Hall Avenue, Norfolk, Virginia 23510-1728. Please advise us if that date and time are agreeable with you."

On August 21, 2007, Claimant directed a note to Mr. Licate stating in part:

“...I will be unable to attend this conference due to the costs that would be incurred in the 750 mile round trip. Therefore I plan to proceed to the next level in processing my claim”

On September 4, 2007, Carrier advised Claimant that it could not forego the conference mandated by the statute but was flexible with respect to the date suggested. It further advised that if Claimant failed to conference the matter Carrier would consider the claim procedurally barred from further prosecution.

On September 10, 2007, Claimant offered to attend a conference if held in Bluefield, West Virginia. Failing that, he advised, he would “proceed with the exparte submission and take my chances with the NRAB.”

After Carrier rejected that suggestion on September 10, 2007, Claimant on September 12, 2007 submitted a Notice of Intent to file a Submission to the NRAB.

Carrier takes the position here that the matter is improperly before the Board. We agree and dismiss accordingly. In the absence of a conference on the property, the case is procedurally defective, precluding the Board from considering its merits. Failure to conference is no minor or “technical” defect. The Railway Labor Act mandates that absent clear compliance with the statute, claims not properly conferenced on the property such as this are barred from consideration by the NRAB on their merits. See, e.g., Second Division Award No. 7453 Norfolk and Western Railway Company & Claimant Vance Poteet (Eischen, Arb.) (1978).

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of November 2008.