

PARTIES TO DISPUTE: (John P. Livingston  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Non-Prior rights Carmen (PC), coming into my prior rights territory (EL), and performing all aspects of the Carmens duties on a regular basis. Therefore, keeping me from employment."

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 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 instant Claim involves a factual disagreement as to whether Carrier could assign non-prior rights Carmen to effect car repairs in Claimant's prior rights district.

Preliminarily, however, and before the instant case can be reached on the merits, Carrier has raised a threshold procedural question which, if answered in the affirmative, would effectively divest this Board of jurisdiction. Carrier alleges that the Claimant did not appeal this Claim to the Board until March 18, 1992. Since the Claim was declined by Carrier's highest designated officer by letter dated July 12, 1991, Carrier contends that proceedings were not instituted before this Board within a timely manner, as the March 18, 1992 notice of intent filed by Claimant is not within the six month time limitation provided in Regulation 7-B-4 of the schedule Agreement.

We concur with the Carrier's contention that the matter before us is not timely, nor was it handled in the manner prescribed by the collective bargaining agreement. Having failed to file his notice to this Board within the requisite time frame, the Claimant did not handle the Claim in the "usual manner" as set forth in Section 3, First (i) of the Railway Labor Act, which states:

"(i) the disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working

conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."


Our jurisdiction is limited to those cases handled in the "usual manner." See Second Division Awards 11143, 11052, 9688, 5250. We, therefore, have no alternative but to dismiss this Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of January, 1993.