

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13328

Docket No. 13206

98-2-96-2-117

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Earl R. Davis

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

"My claim is wrongful removal from the carrier seniority roster. I am a Car foreman who was removed from the carriers carman's seniority roster by the carrier at the insistence of the Carmen's Union based on a 1984 national agreement. The carrier has negotiated subsequent contracts locally with the crafts. According to rule number 31, paragraph C of the current schedule between the carrier and carmen, I feel this is a wrongful removal."

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 Board concludes that it lacks jurisdiction to rule on the merits of this claim.

Section 2, First and Second of the Railway Labor Act states:

"It shall be the duty of all Carriers, their officers, agents, and employees to exert every reasonable effort . . . to settle all disputes. . . ." 45 U.S.C. §152 First.

"All disputes between a Carrier or Carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the Carrier or Carriers and by the employees thereof interested in the dispute." 45 U.S.C. §152, Second.

Section 3, First (i) of the Act mandates that all disputes between an employee and a Carrier, ". . . be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes. . . ." 45 U.S.C. §153, First (I). Section 301.2(b) of the Rules of Organization and Procedure issued by the National Railroad Adjustment Board as Circular No. 1, October 10, 1934, states:

"(b) No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934." (Emphasis added.)

Disputes must be handled in the usual manner which includes the parties' obligation to hold a conference on the property to discuss the claim. This was not done in this case. This Board has stated on numerous occasions that these provisions are mandatory and cannot be circumvented because of extenuating circumstances.

The above notwithstanding, the Board concludes on the basis of the sparse record that the Claimant's construction (given the facts and circumstances of this case) of Article VII of the 1986 National Agreement is proper, namely, to maintain his seniority as a Carman, the Claimant was required to pay Carmen dues.

AWARD

Claim denied.

Form 1
Page 3

Award No. 13328
Docket No. 13206
98-2-96-2-117

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 16th day of September 1998.