

Award No. 13959
Docket No. MW-15310

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The discipline imposed upon Mr. Eusebio Lopez and Mr. Louis Eskridge because of alleged responsibility for a motor car — automobile collision on August 26, 1963, was without just and sufficient cause and on the basis of unproven charges. (Carrier's Files 30-20-107 and 30-20-108).

(2) The charges against Claimants Eusebio Lopez and Louis Eskridge shall be stricken from the record; they shall be reinstated to the position from which each was removed; they shall each be allowed payment for the assigned working hours lost, less any earnings in the service of the company; Claimant Eskridge's seniority as an Assistant Foreman and as a Motor Car Operator shall be restored and that Claimant Lopez's seniority as a Foreman and as an Assistant Foreman shall be restored (Rule 22-e).

OPINION OF BOARD: It is admitted that relative to this claim no conference was held on the property. Because of this, Carrier challenges this Board's jurisdiction.

The great weight of precedent holds that a conference, on the property, between the parties, to seek to settle a dispute, is a jurisdictional prerequisite to submission of a dispute to this Board. Award No. 13721 and Awards cited therein. Petitioner argues that those Awards are not applicable to discipline cases which are handled in accord with a procedure prescribed in the Agreement. We find the precedent Awards apply regardless of the nature of the dispute, for as we said in Award No. 13721:

"It was decided by Congress that 'all disputes * * * shall be considered, and, if possible, decided, * * * in conference * * *.' The words are mandatory, not optional." (Emphasis ours.)

The only qualification is that a party who by actions or nonfeasance evades a conference on the property is estopped from raising a jurisdictional issue

because of lack of a conference. Such maneuvers would be repulsive to the statutory intent. Awards No. 13120.

We will dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. N. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November 1965.