

Award No. 18339
Docket No. MS-18679

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

J. J. MILESKY

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on January 17, 1970, covering an unadjusted dispute between me and the Penn Central Railroad involving the question:

That the Penn Central Railroad, by charging me with being absent from duty without permission on certain days, during the month of December, 1967, and having me appear for and/or attend a trial, based on these charges, violated the following rules of the Agreement Effective May 1, 1942, between the Pennsylvania Railroad and the Brotherhood of Railway, Airline and Steamship Clerks: Rules 2-A-1 (a), 5-E-1 (a), 5-E-1 (h), 4-A-9, 4-E-1 (b), 4-E-1 (c) and 4-D-1 (b).

The violation of Rule 2-A-1 (a) is based on the fact that the bulletin advertising the extra position, which was awarded me, did not show the days of rest.

The violation of Rule 5-E-1 (a) and (h) is based on the fact that in the Pennsylvania Railroad's charges of being absent from duty, no allowance was made for rest days.

The violation of Rule 4-A-9 is based on the fact, that, as an extra employee I had a bid position, basic wage rate, accumulation of seniority, symbol number and regular starting time, and was subject to trial and disciplinary action for failure to report off, therefore, on days on which I was not used, I must presume that I was called for duty and not used and entitled to payment in accordance with this rule.

The violations of Rules 4-D-1 (b) and 4-E-1 (b) and (c) are based on the fact, that, I appeared for or attended a trial, two times, and was not compensated for my time. Neither was I given a transcript of proceedings, nor was I informed of a verdict of this trial.

OPINION OF BOARD: It is clear from the record that the claim the Petitioner is attempting to assert before this Board was not handled on the property of the Carrier in accordance with the provisions of the applicable collective bargaining agreement and as required by Section 3, First (i) of the

Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Therefore, the claim is barred from consideration by the Division and will be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1970.