

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 22405
Docket Number MS-22414

Abraham Weiss, Referee

(Herbert **Murray**

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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 **exparte** submission on or before January 6, 1978 covering an unadjusted dispute between **me** and Conrail Corporation involving the question:

'The claim **made and** stated here is that I **have been** unjustly illegally and **discriminatorily discharged** and that my civil rights have been violated' **and** request that I be reinstated to my job **with full** back pay and all other **incured** benefits."

OPINION OF BOARD: Claimant was dismissed from Carrier's service **on** June 30, 1977, following an investigation **con-**
cerning charges contained in a notice dated June 6, 1977, as follows:

"Misuse **of company** credit card, by purchasing gas for his personal vehicle on **June** 3, 1977."

Claimant was present at the formal investigation of the charges and was represented by a duly accredited representative of the craft. As is customary in such proceedings, Claimant was **asked** at the conclusion of the **investigation:**

"...**have** you **any comments** or criticisms of the way this trial has been conducted."

Claimant's response was **"No."**

The Carrier offers several defenses to the claim; however, in view of the Board's consideration of one of those defenses, it will be unnecessary to consider all of them.

The Carrier's defense to which we refer is that the claim submitted to -the Board was not handled in the usual manner on the property, as required by Section 3, First **(1)** of **the Railway** Labor Act and Circular No. 1 of this Board.

Claimant was dismissed from Carrier's service after he was **found guilty** of misusing a **company** credit card. A claim, identified as System Docket 340, was progressed by the general Chairman, Maintenance of **Way Employees**, to Carrier's highest appeals officer where **it** was declined. That claim is not before us now.

The claim before us first **came** to **Carrier's** attention **when** it received a letter from the Board's Executive Secretary which contained the following statement by the **Claimant**:

"The claim made and stated here is that I have been unjustly illegally **and discriminatorily** discharged **and that my** civil rights have been violated" and request that I be reinstated to **my** job with full back pay and all other **incured [sic] benefits**.

Although this statement of the claim by **the Claimant** is predicated **on the same** incidents and resultant discharge, it advances a new theory of violation, including the **alleged deprivation** of his civil rights, not previously submitted to the Carrier in progressing the **claim and in conference on** the property. Consequently, Carrier had no opportunity to consider the newly **formulated claim** and **respond** to it. (**Claimant**, in addition, alleged inept **and** inadequate representation.)

The opportunity to adjust grievances on **the** property is central to the purposes of the **Railway** Labor Act, and is, in fact, **prescribed by** that Act. **When that opportunity** has not been presented, as in the instant case, this Board has no alternative but to order **a dismissal of the claim**.

What we have stated above does not affect the disposition of System Docket 340, should it reach a Board for adjudication.

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 has jurisdiction **over** the dispute involved herein; and

That the **claim** be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated **at Chicago**, Illinois, this 16th day of May 1979.