

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23449
Docket Number MS-23491

Herbert Fishgold, Referee

PARTIES TO DISPUTE: { David L. Peters
Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "1.) The Carrier violated Rule 30 of the current Clerk's Agreement when they failed to compensate me at the appropriate rate of pay as required by the Rules Agreement.

2.) Carrier shall be required to compensate me for five hours at the rate of my position at the pro rata rate of pay, amount \$45.82, which is the difference in the time actually allowed, \$27.48. Three hours at pro rata was allowed where eight hours pro rata is due account of my being required to attend an investigation on January 2, 1980 by the Carrier as a "Witness for the Carrier."

OPINION OF BOARD: Before going to the merits of this dispute we must dispose of respondent Carrier's jurisdictional contention that the Board must summarily dismiss Petitioner's claim because the dispute was not properly progressed on the property pursuant to Section 3, First (1) of the Railway Labor Act in that the dispute was not discussed in conference on the property. It is well established by a long succession of awards that jurisdictional defects may occur if the parties failed to hold a conference on a claim or grievance on the property, See Awards 17166, 17478, 18854, 18880, 19709, 19885 and 21440 to name but a few.

On occasion though, we have held that a conference is not required if it would be a futile act, Awards 2786, 3269 and 10030; that the conference might be waived, 7403 and 13663; and that an opportunity for a conference must be given, Award 10769.

Applying these principles to the instant case, we find that no conference was held on the property; thus, the claim stands to be dismissed unless a compelling exception is present. Petitioner argues that this is a longstanding dispute and references three conferences held two and three years prior to the date of claim herein as evidence that the basic dispute was in fact discussed in conference, thus arguing that the conference requirement has been met. We do not think that holding a conference on a similar claim earlier meets the conference requirement of the Act. For obvious reasons such an earlier conference did not and cannot contribute to an effort to resolve the instant dispute on the property - an obligation placed upon the parties under the Act.

Petitioner also argues that he attempted to have a conference but was "unable to even get by their secretary." Petitioner has offered no proof to support this allegation. He has not submitted any evidence whatsoever, not even a letter requesting a conference that was ignored or denied. We are therefore unable to find on this record that he was frustrated in an attempt to have a conference sufficiently to cause a waiver of the conference requirement.

The claim will be **dismissed** on account of **not being** handled in accordance with Section 3, First (i) of the Railway **Labor** Act.

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 **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:

A. W. Paulson

Executive Secretary

Dated at Chicago, **Illinois**, this 8th day of **December 1981**.

