

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23569
Docket Number MS-23853

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Harold F. Fulton
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "That I am being denied my seniority rights, given to me through agreement between Conrail and The Brotherhood of Railway and Airline Clerks, in the arrangement presently being used in the assignment of vacation periods."

OPINION OF BOARD: Our review of the record establishes that Claimant's petition is procedurally defective. The Board is precluded from considering the **claim** on its merits, **since** Petitioner has admittedly not complied with **Section 3**, First (i) of the **Railway** Labor Act or Circular No. 1 of the **N.R.A.B.** The Act requires the **claim** to be handled in the "usual manner on the property up to and including the chief operating officer of the **carrier** ..." **The** same requirement is incorporated in the Board's **Circular** No. 1.

Petitioner **has** not observed this **requirement** and for that reason the **claim** must be dismissed. See Awards 22120 and 22304.

Even if, arguendo, we could avoid the procedural defect, **we** would be required to **deny** the claim on its merits, for the simple reason that Claimant was initially afforded the **opportunity** of selecting his vacation preference and **the assignment** of vacation dates was done in cooperation with the local committee es mandated by Section **4** of the **National** Vacation Agreement, as amended.

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 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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

