

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24141
Docket Number MS-24044

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Widow of Frederick C. Schaefer, Jr.
{ Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: "Please consider this Notice of Intention to File Dispute with your organization on behalf of the widow of Frederick C. Schaefer, Jr., against the Illinois Central Gulf Railroad Company, for the following, to-wit:

A.) That the Continental Casualty Company as insuror of Illinois Central Gulf Railroad has denied coverage ad refused to honor the claim of the widow of Frederick C. Schaefer, Jr., filed by said widow for her husband, who was accidentally killed while employed by Illinois Central Gulf Railroad.

B.) That the Illinois Central Gulf Railroad Company violated Article V of the February 25, 1971 Agreement, as amended, effective January 30, 1979, when it failed and refused to compensate the widow of the employee, Frederick C. Schaefer, Jr., who was accidently killed on or about July 13, 1979, in accordance with terms thereof; and,

C.) The Illinois Central Gulf Railroad shall now be required to allow the widow, MM). Frederick C. Schaefer, Jr. the sum of \$150,000.00, as required by the agreement."

OPINION OF BOARD: The Claimant was operating his personal vehicle on the day in question and was involved in a collision with a truck, and he died shortly thereafter.

Although the cause of death was marked "unclassified" there is some indication of record that the Claimant may have died of a heart condition rather than as a result of the accident.

On March 26, 1980 a claim was filed, pursuant to Article V of the February 25, 1971 Agreement as Amended (effective January 30, 1979) because the Company failed to compensate the widow of the Claimant who was - according to the claim - accidentally killed on or about July 13, 1979. It was asserted that his death was subject to the terms of the referred to Agreement.

The Carrier denied the claim because the insurance company had denied liability inasmuch as the policy covers only an employee who is "on business of the policyholder" and "when injury is sustained in consequence of riding as a passenger in or on, boarding or alighting from any off-track-land conveyance for the purpose of deadheading under orders or being transported at the policyholder's expense." In addition, the Carrier asserted that the Claimant had died independently from the accident.

In reply to the denial, in December of 1980, the Claimant submitted additional materials as exhibits and requested an early response so that Notice of Intention to appeal to the National Railroad Adjustment Board could be made. On December 16, 1980, a Notice of Intention was filed with the Third Division of this Board.

Thereafter, on January 7, 1981, the Counsel for the Claimant's widow advised the Carrier that he understood that the parties must take part in a conference before the dispute is docketed with the NRAB and he requested information concerning a time and place of said conference.

On January 19, 1981 the Carrier advised that a conference as mandated by the Railway Labor Act must be held before proceedings are instituted before the NRAB. Because "Notice of Intention" was given on December 16, 1980, the request for a conference came too late.

Thereafter the parties disputed the question of whether or not Third Division Award No. 19034 was controlling, however the matter remained in dispute.

The Carrier has cited Section 2, Second, of the Railway Labor Act which states that disputes shall be considered and, if possible, decided, with all expedition, in conference between representatives designated and authorized to so confer and Section 3, First (1) of that Act provides the method for submitting the case to the Railroad Adjustment Board. The Carrier has cited a number of Awards which have considered the failure to hold a conference and it has relied upon the favorable Awards such as Third Division Award No. 22646. That Award held that the provisions of Section 2, Second of the Act are mandatory and that disputes shall be considered and if possible decided "in conference." Further, that Award stated that the Act requires that a dispute should be appealed to this Board for a Decision only after the parties to the dispute have held a conference on the property to try reach settlement. Other Awards are cited, including Award No. 21440, which cited ten (10) Awards holding that a failure to hold a conference on the property is a serious procedural flaw on which basis the claim must be dismissed. See also Award No. 20627 and No. 21373:

"The appeal to the highest level on the property is not only procedural under the Agreement it is also a jurisdictional prerequisite to our taking a claim under Section 3, First-(1) and Circular No. 1 of the NRAB. Absent such prior exhaustion of remedies we are secluded by Law from disposing of the alleged issues presented, whether procedural or substantive."

We have noted the Awards cited by the Claimant, with **particular** reference to Award No. 19034. There, **a** conference was held shortly after the Organization's Notice of Intent was filed. The **Award** held, "But here a conference was held. Except for **Award** No. 14873, which we affirm only to the extent that it holds a conference is required, there is no showing that a **conference** must be held before the filing of the Notice of Intent. A conference held when this one was **would serve the same** purpose of meeting **face** to face and **discussing** the matter with a view to settlement as one held earlier. In the **circumstances** of this case, we find that a **conference** was held as required."

Without **commenting** upon that finding, we also note in Award No. 19034 the statement:

"Conferences are required by the Act and Circular No. 1 **and** we affirm, the long line of cases which hold that where no conference is held the claim must be dismissed."

The Claimant's **representative** argued at the hearing before this **Board** that there are instances where the parties can waive a conference and instances where a conference is only required if requested, etc. Although able arguments were **presented** along those **lines** we searched the record in vain to find any factual **indication** that the **Company**, by words **or** actions, waived the requirements of the **Act**.

'Ibis Referee has held on **numerous** occasions that a **Board** of Arbitration is powerless to alter the **contractual** requirements of the parties; but rather our jurisdiction extends to applying the Agreement reached by the **authors** of the Agreement. The same applies, of course, concerning a Statute **and especially where the Statute is jurisdictional in nature**. For **this** Board to rule **that there is jurisdiction to hear the merits** of this case would require that we ignore the rather clear language of the **Statute** even where there is no showing of a waiver by both parties. While it is always much preferable to consider a case on the **individual merits**, in this **case** we are powerless to do so and we are **required** to dismiss the claim as a jurisdictional matter.

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 **Employes** involved in this **disute** are respectively **Carrier and Employes** 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.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
 National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January 1983.

