

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award Number 25457
Docket Number MS-25231

Herbert L. Marx, Jr., Referee

(Michael W. Patton

PARTIES TO DISPUTE: (*(Illinois Central Gulf Railroad*

STATEMENT OF CLAIM:

"(1) I, Michael W. Patton, have been in dispute with the Illinois Central Gulf Railroad.

(2) This dispute concerns my loss of my Group **B rights, which were taken away from me on December 22, 1982."**

OPINION OF BOARD: Claimant was subject to an investigative hearing on the charge of his *responsibility, if any, in regards to damages to burro crane PR-49, discovered on Monday, November 29, 1982, resulting from your alleged failure to properly lubricate the differentials*.

At the investigative hearing, conducted in a fair and proper manner, evidence was disclosed showing that the Claimant had failed to record on a check list provided for him the lubrication of the axle gear case. Claimant had been specifically advised on the requirement to complete the check list on a daily basis.

The Claimant testified that the burro crane was in poor operating condition, that he had made frequent lubrications, and that he had reported the condition. Other witnesses testified to severe damage to the crane, based on apparent failure to provide proper lubrication of at least some parts. In view of the Claimant's failure to record lubrications as directed, the Carrier reasonably concluded that the Claimant had, in fact, neglected to make all the lubrications as required.

The Board finds nothing in the record of hearing to show that the Carrier's conclusion was unreasonable.. The penalty was loss of seniority rights as a Group **B** Machine Operator (but not as to other positions for which the Claimant was qualified). The Board also has no basis to dispute the Carrier's judgment as to this degree of penalty.

In addition, the record shows that the **Claimant** failed to seek a conference with the Carrier prior to submission of the dispute to this Board. He had been advised in timely fashion of the necessity of **doing this** by a Member of this Board. Although argument on behalf of the Claimant sought to show that a conference was not required by law, this point is well settled by previous awards. For, example, Award No. 14873 states:

***It appears that the more recent awards have firmly established a mandatory duty of the parties to hold a sit down face to face conference prior to submitting a dispute to this Board. . . .**

***This Board is a creature of Statute; its powers are defined and limited by Statute. It is powerless to enlarge upon any statutory grant. Section 2, Second of the National Railway Labor Act -- in clear, concise language -- calls for a conference of the parties on the property prior to submission of a claim to this Board. Section 2. Sixth of this Act does not in any way alter the mandatory provision of Section 2, Second; it merely gives to either party the right of requesting a conference and imposes a time limit within which to confer after a request has been made. . . .**

***No matter how futile a conference may be, a conference must be held on the property prior to submission of a claim to this Board. Otherwise, this Board has no right to consider the claim in question:**

Question was also raised concerning the timeliness of a "supplementary submissison" presented to the Board on behalf of the Claimant. Without resolving the timeliness issue, the Board notes nevertheless that some of the information set forth in this submissison was clearly not presented on the property during the Claims handling procedure and thus could not be considered by the Board in any event.

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 **Employes** involved in this dispute 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

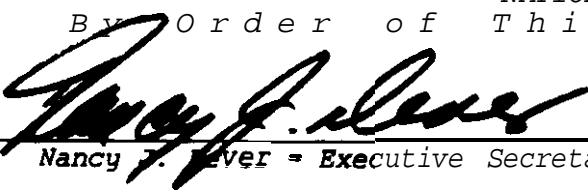
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of May 1985.