

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25915

Docket Number MS-25714

Hyman Cohen, Referee

(Edward Conley

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"I am filing charges of discrimination and conspiracy to discriminate against Consolidated Rail Corp. and its Chicago division agents, namely: D. S. Cargill (Division Engineer), Joseph Stefanelli (Asst. Division Engineer), Robert Worley (Asst. Supervisor of Track, Chicago Division with headquarters, Union Station Room 584, 516 W. Jackson Blvd., Chicago, Ill. 60606), Jack Wood (Track Supervisor, Morocco, In. 47963), and R. E. Miller, (Track Foreman, Sub Div. 7, Morocco, In. 47963)

I am filing a Damage Suit against the names mentioned above in the amount of \$600,000.00.

I am a former Erie Railroad employee, now working for Conrail out of Morocco, In., under Jack Wood. I have 39 years of service with seniority date of trackman on March 2, 1946. I was promoted to track foreman on June 29, 1953, to assistant foreman on June 29, 1953, and to machine operator on April 17, 1956. On the new roster of June 30, 1983, the company has my Class 2 operator seniority dated July 16, 1959; it should be the same as my Class 3. They also failed to list my Class 1 seniority date at all, although it should be the same as my Class 2 and Class 3 - April 17, 1956.

The Conrail Corp. and their agents refuse to allow me to exercise my seniority as a foreman or operator in jobs that I am qualified and entitled to, refusing to let me displace anyone, even men who have less seniority. Furthermore, they refuse to let me perform any overtime work, relieving me when overtime should begin with another man who has less seniority.

On August 4, 1983 I attempted to bump R. E. Miller on a track cleaner, working on the Danville line out of Morocco, In. I was told by Bob Worley, assistant supervisor of track that I could not "bump" Mr. Miller (Class 3 Operator, seniority date of June 20, 1957, foreman seniority of April 4, 1957, assistant foreman seniority of August 21, trackman seniority August 31, 1950). They refused to give a reason for not allowing me to use my seniority or their reason for not allowing me to work overtime.

I request a hearing on these matters at the earliest possible time."

OPINION OF BOARD: The Claimant is employed by the Carrier as a Trackman in Morocco, Indiana. He entered the service of the Carrier on March 2, 1946.

The instant Claim first came to the Carrier's attention when it receive the Executive Secretary's letter dated January 31, 1984. Attached to the letter was a copy of the Claimant's notice of intention to file an Ex Parte submission.

There is no evidence on the record before us that the Claimant presented a grievance to the Carrier under the applicable schedule Agreement; nor did he attempt to handle the dispute on the property in accordance with the Agreement. As a result of the Claimant's failure to comply with the Agreement, the Claim has not been processed as required by applicable Law and National Railroad Adjustment Board Regulations.

Section 3 First (i) of the Railway Labor Act requires that Claims "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes * * * ." Circular No. 1 of the National Railroad Adjustment Board provides that:

"No petition shall be considered by any Division of this Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act."

Accordingly, the Claimant has not complied with the applicable Agreement, the Railway Labor Act and the applicable Regulations. The Board, therefore, does not have jurisdiction in this matter because the Claim is procedurally defective. See Third Division Awards, 22473, 22482 and 22481. The reasons for not considering the Claim on its merits were adequately set forth in Third Division Award 24759:

"The requirements of collective bargaining contract and the law that a claim be processed ' . . . in the usual manner . . . ' on 'the property' are much more than mere procedural niceties. If a grievance is not properly filed and processed, the underlying issue is never subjected to necessary adversarial testing. Moreover, of critical significance is the fact that no record is generated to be used as a basis for this Board's essential 'appellate' deliberative and decision-making processes."

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 Employee 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.

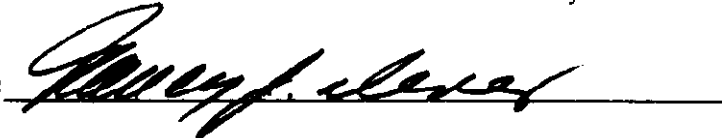
That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.