

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26248
Docket Number MS-25981

Robert W. McAllister, Referee

(John L. Bennett
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"I was fired from Conrail, January 16, 1979, for insubordination; refusing to work in the rain. Jerry Woods, Assistant Production Engineer, told me to get on the track. He said, 'I'll give you five seconds to get off the machine and get on the track.' I put my hand **out**, it was raining, about five seconds later, he told me to get off the tracks. so I got off. Mr. Woods never told me I could be pulled out of service.

Several times I have gotten my time cut; when I did not work during rainfall.

I had six days to prepare for my trial. Mr. Wood and Mr. **Crague's** testimony was inaccurate. They said that I told them (sic) no, that I was not going back to work. I simply let them know that I did not think it was safe to work in the rain.

During the initial hearing, I was told that before any disciplinary action would be taken, I would have to sign the recorded transcripts and send them in. I did **recieve** (sic) a copy of the transcript. However, in that transcript it stated **that** I was fired. That did not agree with what I was told would be the procedure. Thus, I did not immediately sign and send the transcript back.

For approximately **theree** (sic) months after the initial hearing, I received no further information or request for a signed transcript.

Approximatally (sic) on March 8, 1979 I received a letter from E. P. Farabaugh Field Clerk of Pittsburgh, Pa. I was to start work in East St. Louis, Ill. I had ten days to report. Upon arrival O. **J.** Dean told Mr. Cohagan, Supervisor of the rail gang to tell me to get off the track. I was fired. Returning home I called my union representative, J. E. Palermo.

Palermo sent me an appeal **form**. I sent the completed form to Mr. R. H. Smith Chief Engineer. I recieved (sic) a letter from Mr. O. **J.** Dean stating, I had plenty of time to read and sign the transcripts., 15 days had passed and the decision would stand. However, if my signature was required and the decision was made before I signed them, the whole process was violated. I also appealed to R. H. Smith and recieved (sic) a letter back from O. J. Dean.

In the meantime Mr. **Palermo** passed away. I then called Pittsburgh several times to talk to F. P. Nuspaum. He told me not to call anymore. He nor the **unoun** (sic) would help me.

I could continue to list inconsistencies. However, I believe that my point has been made.

I was not given an employee handbook or job **dedcription** (sic) by Conrail or the union.

I had to depend entirely on union representation that I feel did not adequately inform me of my rights or of the hearing process and subsequent appeal process.

I would be grateful and fully expect that this board will take all factors into account and at least grant me a hearing in which I would have a fair voice and **recieve** (sic) the information needed to adequately defend myself and return to full employment and the self satisfaction of earning a living for myself and my family."

OPINION OF BOARD: The Claimant, J. L. Bennett, was a **Trackman** on Gang 312, Kankakee Branch at the time of his removal on January 16, 1979, for insubordination. The undisputed facts of this record reveal the Claimant did not appeal his dismissal until approximately two and one-half months had transpired. Rule 6-a-1 of the Controlling Agreement specifies such appeals must be lodged within fifteen (15) days. Secondly, the record also establishes the appeal was not directed to the Superintendent of Personnel as provided by the applicable Rule. We find these requirements are explicit and uniformly upheld by the several Divisions of the National Railroad Adjustment Board. Before this Board can exercise jurisdiction over a dispute, it is essential and mandatory to establish that the requirements of the Railway Labor Act have been met. In pertinent part, Section 3 requires that disputes "... shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." Accordingly, we find this Claim has not been handled as required.

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 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 is barred.


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Claim dismissed.

National Railroad Adjustment Board
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1987.