

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28125  
Docket No. MS-27265  
89-3-86-3-415

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Jason G. Smith  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"Did Virgil Hannahs Jr. have legal right to bump me from my position as extra gang-truck driver-laborer?"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This Claim alleges an illegal bump. The Claimant asserts he was number one on the Extra Long Truck Driver/Laborer Roster since June 14, 1984. Thereafter, on November 12, 1985, the Claimant contends he was bumped by Employee V. Hannahs, Sr., who purportedly acquired his roster rights in 1980.

The Carrier argues this Board lacks jurisdiction to hear and decide this dispute because the Claimant failed to handle this matter in the usual and customary manner as prescribed by Section 3, First (i) of the Railway Labor Act, which states in relevant part:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act shall be handled in the usual manner up to and including the chief

operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The Carrier contends the Claimant filed his Notice of Intent to file an Ex Parte Submission dated July 3, 1986, without previously presenting a claim/grievance to any Carrier officer.

This Board has reviewed the evidence of record and finds the Carrier's arguments to be based on uncontroverted fact. Therefore, we must conclude the Board is without jurisdiction to hear and decide this matter on the merits. The procedural flaws in this claim are fatal and require dismissal of the claim in its entirety.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1989.