

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28542
Docket No. MS-27248
90-3-86-3-389

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Boris L. Merrick
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"The Statements of this claim is for violation of Rules 2A, 9, 18A&B, 21A, C&D, 38H, 41, 62, 69A, and 73 of the Agreement between Burlington Northern Railroad Company and the Brotherhood of Maintenance of Way Employees of the Third Division. The main violation of these rules arrives out of the questioning of Rule 62. UNJUST TREATMENT and Rule 69A. NON-DISCRIMINATION."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 is a Claim by an employee on his own behalf, alleging "unjust treatment" and "discrimination" in violation of, inter alia, Rules 62 and 69.

Carrier asserts that this matter first came to its attention when it received a copy of the Board's letter of July 2, 1986, advising that a notice of intention to file an ex parte submission had been filed by the Claimant. According to the Carrier, no claim or grievance of any kind was presented to the Carrier prior thereto. Claimant offers no contrary information on this crucial point.

Under these circumstances, this Claim must be dismissed as the Board is without jurisdiction to consider it. Claims or grievances must be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes. Section 3, First (i) of the

Amended Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board, under the heading "Classes of Disputes," both contain this same requirement. Since there was no claim or grievance presented to any Carrier officer prior to the submission by Claimant before this Board, it is clear that the instant dispute has not been handled in the usual manner as prescribed by statute and by the Labor Agreement. The Third Division has, on numerous occasions, held that cases with similar defects must be dismissed for lack of jurisdiction. See Awards 25915, 25259, 27486, 24259. The reasons for not considering the Claim on its merits were 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."

As a result of Claimant's failure to process the Claim as required, we have no alternative but to dismiss the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.