

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31391
Docket No. MS-31631
96-3-93-3-618

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Reginald L. Daniely
(Norfolk Southern Railway Company
(Central of Georgia)

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between me and the Norfolk Southern Railway involving the questions:

In Assignment to position of Traveling Signal Maintainer in Augusta, Georgia, in the case the company violated the training agreement. Records indicate that the Carrier assigned the position to another employee, who allegedly has forfeited his seniority to the position sought by me. The question contends that the other employee, who was my senior, had failed to bid, or accept assignment to another position at Vencent, Alabama and therefore forfeited his seniority. Section III(f) of the Central of Georgia training agreement provides that if an employee fails to bid or fails to accept assignment to a permanent position, the employee shall forfeit all seniority."

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 employee 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.

The Statement of Claim as outlined supra is a direct quote from Claimant's Notice of Intent as served on this Board. The Statement of Claim as contained in the Submission to the Board reads as follows:

"Claim on my behalf for seniority, the position of Signal Maintainer at the Augusta Georgia Junction and all wages and salaries of that position dating back to April 1, 1992 until I am awarded that position."

The Board carefully reviewed the record in this case and can only conclude therefrom that we do not possess the jurisdiction to look into the merits of the dispute. It is indisputable from this record that not only is there no basis for the claim, but also that there are fatal time limit issues involved, as well as jurisdictional issues as a result of the fact that there was no conference held on the property to consider this dispute.

Section 2, Second, of the Railway Labor Act, as amended, expressly requires that all disputes must be considered "in conference" before they may properly be submitted to this Board. This issue has been addressed by a legion of Awards of this Board as well as by decisions of the U.S. Supreme Court. Representative of these decisions is Third Division Award 14873, which correctly held that:

"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."

Therefore, the Board has no choice but to dismiss the claim for the reason that the dispute was not handled in accordance with the provisions of the Railway Labor Act and of Circular No. 1 of this Board.

AWARD

Claim dismissed.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.