

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31510
Docket No. TD-31837
96-3-94-3-137

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

(American Train Dispatchers Department
(of the International Brotherhood of
(Locomotive Engineers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"(A) Conrail Corporation...violated the current effective agreement between the Carrier and the American Train Dispatchers Association Rule 4 Sec D in particular on September 23, 1991 the Carrier failed to comply and release Mr. Finley as per Rule 4 Sec D.

Carrier shall now compensate train dispatcher M. Finley at time and one half...commencing on Sept. 23, 1991 and continuous until he is released and properly assigned..."

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 waived right of appearance at hearing thereon.

After full and careful review of the record on both the procedural issues and merits, this Board must forego both a discussion of and a determination of merits due to procedural errors which are controlling at bar. The considerations which govern this Board's authority preclude its deliberations on any claim which is untimely progressed on the property.

Rule 17(b) holds that a grievance denied:

"...shall be considered closed unless it is appealed to the Manager-Labor Relations by the employee or his union representative within sixty (60) calendar days after the date it was denied... When a grievance or claim is not allowed, the Manager-Labor Relations will so notify, in writing... of the reason therefor. When not so notified, the grievance or claim will be allowed."

The Carrier noted in its letter dated December 3, 1992 that the instant claim was procedurally defective under Rule 17(b) as it was not progressed to the Manager-Labor Relations. The Carrier's position was rejected by the Organization noting that a January 13, 1992 letter properly progressed the claim to the Manager-Labor relations who failed to respond and under Rule 17(b) the grievance must be allowed.

The burden of proof that Rule 17(b) was followed and the claim was appealed to the Manager-Labor Relations rests with the Organization. The Senior Director denied the claim for failure to timely appeal to the Manager-Labor Relations. Prior thereto, and in fact, at no point does this Board find a record or claim on property for procedural payment of the claim under the Rule. After notification of a defect, the Organization produced a letter of appeal dated January 13, 1992.

This Board finds the letter deficient as proof of a properly appealed claim. It is a handwritten letter signed by the Office Chairman and written to the Manager-Operating Rules who denied the initial claim. In fact, it refers only to the initial denial and never states it is an appeal of the claim. There is nothing in the content of the letter to support the argument that it was written as an appeal to the Manager-Labor Relations. The Organization grounds its arguments on the fact that it is addressed to "Fran Doyle Mgr. Labor Rel" and has a receipt stamp dated January 20, 1992. Carrier points out on property that "the format and text of that correspondence does not conform to... an appropriate appeal...."

The Board's study of that letter concludes it lacks the content and character necessary to substantiate that it was an appeal as per the Rule. It appears to be a rejection of the original denial. The letter was alleged by Carrier to have been "parafaxed" and received on January 20, 1992, but was not an appeal, simply a copy of the letter to the Manager-Operating Rules.

The address to the Manager-Operating Rules is crossed out and overwritten by hand to the Manager-Labor Relations in what is clearly someone else's writing slanted in the opposite direction from the original handwritten letter. It is not clear to this Board that it is an appeal. There is a lack of probative evidence to support that assertion. There is no record of evidence that such appeals of this form are normative on this property. Absent proof of a substantial nature to move beyond the procedural issue herein before this Board, we are precluded from addressing the merits. The claim lacks the proof necessary to document compliance with Rule 17(b). The claim must be dismissed as not properly handled on property under the Rules of the Agreement.

AWARD

Claim dismissed.

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 23rd day of May 1996.