

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33910  
Docket No. MS-34519  
00-3-98-3-49**

**The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.**

**(Lenord B. Murry**  
**PARTIES TO DISPUTE: (**  
**(Union Pacific Railroad Company (former St. Louis**  
**( Southwestern Railway Company)**

**STATEMENT OF CLAIM:**

**“This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between me and the Southern Pacific Transportation Company/St. Louis Southwestern Railway Company involving the following:**

**On August 17, 1995, while an employee of Southern Pacific Transportation Company/St. Louis Southwestern Railway Company, I was operating a tamper machine which was involved in a collision with a train. I was operating the tamper and approaching a curve in the track when I noticed a train was stopped in front of us. I applied the hand brake and the emergency brake, but was unable to stop because of oil applied to the rail by the rail lubricator. The day before the incident the rail lubricator was disconnected and was not dispensing oil. No one had notified us that a train was stopped in that area, or that the rail lubricator had been reconnected.**

**As a result of this incident, I was suspended from service pending a formal investigation, which was held August 23, 1995. This investigation was held to determine if I had violated applicable rules and instructions. The investigation found that I had failed to operate the tamper at a safe speed, and I was dismissed from service. To date, I have not returned to work with Southern Pacific/St. Louis Southwestern.**

On September 22, 1995, I filed a civil lawsuit against Southern Pacific/St. Louis Southwestern to recover damages for injuries I suffered in the August 17, 1995 collision. On August 5, 1997 the deposition of Ronald W. McCartney was taken in connection with this civil suit. Mr. McCartney, one of my supervisors, testified in his deposition that on the day of the collision he conducted a re-enactment with the assistance of James Jenkins. Mr. McCartney instructed Mr. Jenkins to operate a ballast regulator over the same section of track where the collision occurred to determine the distance needed to come to a stop. Mr. McCartney testified that this re-enactment was performed two times, and on both occasions the ballast regulator slid past the point of impact in the collision.

This evidence was known to the railroad at the time of the formal investigation, but was suppressed. The re-enactment proved that stopping a tamper machine under the circumstances was impossible, even if a safe speed was maintained. Although this information would tend to exonerate me of any rules violations, it has not been considered, and I remain unable to return to my former position with Southern Pacific/St. Louis Southwestern.

I request that I be reinstated with the railroad as a result of this newly-discovered evidence."

**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 record presented by Claimant in this case is a copy of his Notice of Intent and excerpts from the transcript of the deposition of Ronald McCartney. Carrier points out, and the record verifies, that Claimant never presented a claim or grievance to Carrier on the property in accordance with the requirements of Article 15 of the Agreement and Section 3, Section First (i) of the Railway Labor Act. Accordingly, this matter was never progressed on the property, there was no exchange of correspondence or positions, and there was no on-property conference as mandated by Section 2, Second of the Railway Labor Act.

The Board has consistently recognized that it does not have jurisdiction to consider claims which have not been handled in the usual manner on the property and which have not been conferenced as required by the Act. Third Division Awards 16246, 15925, 15843, 14873, 13959, 10939, 10852. Accordingly, we are without jurisdiction to consider the merits of this claim.

**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 24th day of January, 2000.