

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36424
Docket No. MW-35461
03-3-99-3-242

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

(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

PARTIES TO DISPUTE: (

(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

“Does Rule 26 of the December 1, 1982, Schedule Agreement provide meal allowance for employees who are not employed ‘in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels . . . ?”

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.

There is no substantive on-property record before the Board. What stands before us is a letter dated April 7, 1999 from the Organization to the Carrier. It is a “complaint” that three named employees had their “298 meal allowance” unilaterally cut and a position that if this were not rectified, the Organization would act “swiftly in whatever manner we deem appropriate.” The Carrier reacted to the letter on April 12,

1999, indicating that it had not violated Rule 26 and explaining why the named employees would not be entitled to a meal allowance. During that correspondence, it stated to the Organization that as "a matter of information to you this dispute has been docketed with the Third Division of the National Railroad Adjustment Board for adjudication." The Carrier noted that it would hold the Organization "accountable for any financial loss . . . as a result of an illegal strike or job action by . . . your Organization."

There is nothing else in this record. The Board finds a Notice of Intent filed under date of April 9, 1999 and received by the Third Division on April 12, 1999. In its Submission and before the Board the Carrier argues that we have jurisdiction. We do not agree.

There is no proper dispute before the Board that was developed on the property. No claim was filed on behalf of the named employees, making them Claimants before us. There is no argument developed between the parties over the proper meaning, practice, and application of Rule 26. What the Board is asked to decide is a question without factual base, for which any answer thereto would be a declaratory judgment and one not based upon an unadjusted dispute. What the Board finds before it is a dispute that was not fully developed and ripe for determination. It is premature and hypothetical.

Further, Section 3, First (i) of the Railway Labor Act requires that:

"... disputes between an employee or group of employees and a carrier . . . growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes. . . ."

The Board finds no initial claim, denial, appeal, denial by the highest officer, and conference, as might be considered "the usual manner." The Board's issuance of Circular No. 1 clearly states that:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

Accordingly, we are not empowered to issue a decision on the Notice before us because it is not properly before the Board. Because it was not presented in full accord with the procedures established by the parties and under the Rules and procedures of the Railway Labor Act, Section 3, First (i) and Circular No. 1, we are without jurisdiction and must dismiss the 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 17th day of March 2003.