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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41218
Docket No. MS-41277
12-3-NRAB-00003-100127

The Third Division consisted of the regular members and in addition Referee Martin Fingerhut when award was rendered.

PARTIES TO DISPUTE: (Brian Harcum
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“The Pennsylvania Federation Union, Local 3063 breached its duty of Fair Representation by failing to process my grievance over my discharge from Conrail. The Pennsylvania Federation Union, Local 3063 acted in an arbitrary and discriminatory manner.”

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.

On May 12, 2009, the Petitioner was instructed to attend a formal Investigation to determine his responsibility, if any, in connection with,

“Your conduct unbecoming an employee of Conrail involving theft and improper disposition of company property when at approximately

9:15AM on Friday, April 24, 2009 you removed material from the Ann Street M. of W. Material Yard and delivered it to two (2) unknown persons for which you received a monetary payment”

The Investigation was held on October 21, 2009. The Petitioner did not attend. On November 4, 2009, the Carrier advised the Petitioner that he was dismissed from the Carrier’s service.

The Carrier raises numerous procedural bases for dismissing the claim. It also alleges that a review of the evidence adduced at the Investigation would lead to a denial of the claim were it reached on the merits. The Board need consider only one contention in finding that the claim must be dismissed.

On January 19, 2010, the Petitioner filed a Notice of Intent with the Board which recited the following:

“The Pennsylvania Federation Union, Local 3063 breached its duty of Fair Representation by failing to process my grievance over my discharge from Conrail. The Pennsylvania Federation Union, Local 3063 acted in an arbitrary and discriminatory manner.”

The jurisdiction of the Board is set forth in Section 3, First (i) of the Railway Labor Act (45 USC Section 153, First (i)). The statute provides that the Board’s jurisdiction is limited to resolving:

“ . . . disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions”

It is obvious that the claim before the Board does not fall within the parameters of the statute. Therefore, the claim must be dismissed for lack of jurisdiction.

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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 22nd day of February 2012.