

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21440
Docket Number MS-21170

James C. McBrearty, Referee

PARTIES TO DISPUTE: (Francis A. Boyson
(Boston and Maine Corporation

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 on March 20, 1975 covering an unadjusted dispute between me and the Boston and Maine Corp. involving the question:

The Boston and Maine Corp violated the Agreement of August 20, 1973 when it refused to post for bidding the position of trainee to the position of Train Dispatcher and its stead picked selected B.R.A.C. employees to train at their B.R.A.C. position rate of pay and all the while training, maintained their standing as B.R.A.C. employees 100 per cent.

Also the Boston and Maine Corp violated the finding of the Third Division in stating that Award #19953 did not have any standing on the Boston and Maine Corp.

I am asking for monetary award plus my request of February 18, 1974 be implemented.

OPINION OF BOARD: The first issue which must be dealt with in the instant case is Carrier's allegation that the claim must be dismissed because no conference was held on the property.

A review of the record indicates that no conference was ever held on the property regarding the instant claim. Claimant rejected two (2) offers of a conference with Carrier, and then attempted to convince Carrier that he was agreeable to a conference during his active working hours as a Towerman at Winchester Tower, Massachusetts, or at certain times by telephone only.

The Board finds that the failure to have a conference on the property is fatal to Petitioner's claim.

Section 2, Second, of the Railway Labor Act requires that "all disputes . . . shall be considered . . . in conference." Moreover, Section 3, First (i) of the Act indicates that disputes "shall be handled in the usual manner" prior to a petition being referred to the appropriate division of the Adjustment Board.

Furthermore, numerous decisions of this Board have held that failure to hold a conference on the property is a serious procedural flaw on which basis the claim must be dismissed (Awards 20976, 20752, 20737, 20574, 20106, 19885, 19709, 19620, 17166, and 10852).

Claimant's offer to meet with Carrier in conference while he was working in the tower, or at specified times on the telephone, is not sufficient to satisfy the requirements of the Act.

As stated in Award 20106:

" . . . if individual employees were permitted unilaterally to determine the place for conference in each claim submitted rather than to conform to the usual manner and orderly procedure mutually agreed upon between the Organization and the Carrier for all claims, the result would be chaos and confusion."

In conclusion, we cannot consider the merits of this dispute, and have no alternative but to dismiss the Claim based on the serious procedural flaw of failing to have a conference on the property.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim is barred.

A W A R D

Claim dismissed.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.