

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21793
Docket Number MS-21685

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Marion Dooley
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(Robert W. Blanchette, Richard C. Bond,
(and John H. McArthur, Trustees of the
(Property of Penn Central Transportation
(Company, Debtor

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 April 1, 1976, covering an unadjusted dispute between Mr. Marion Dooley and the Penn Central Railroad involving the question of whether or not the carrier violated the rules agreement effective February 1, 1968 when it failed on the effective date of the merger agreement to recall the claimant, Mr. Marion Dooley from furlough status as provided in the provisions of the merger agreement.

OPINION OF BOARD: The claim in this case is premised upon Carrier's failure to recall Claimant Marion Dooley from furlough on the effective date of the Merger Agreement, February 1, 1968. The Claimant was employed March 29, 1941 as a Group II employe on the former New York Central and was furloughed July 13, 1962, and has performed no service since that date.

The claim was initiated by the filing of a dispute on February 26, 1973, with the Superintendent-Labor Relations, and then progressed to the highest designated officer, where it was denied for procedural reasons and on the merits. The Carrier argues the claim is procedurally defective because it was not submitted to the proper officer pursuant to Rule 7-B-1(a), which requires that claims must be submitted "to the employe's immediate supervisor."

The record established that the Superintendent-Labor Relations is the second-tier management official responsible for handling claims under Rule 7-B-1, and his responsibilities are limited to appeals from decisions of the "immediate supervisor." Claims are not instituted with the Superintendent-Labor Relations as part of the "usual manner of handling grievances"; consequently the express requirements of Rule 7-B-1(a) and Section 3, First (i) of the Railway Labor Act have not been satisfied in this case.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1977.

