

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21859
Docket Number MS-21791

James F. Searce, Referee

PARTIES TO DISPUTE: (Robert A. McNamara
(
(Consolidated Rail Corporation
(Former Penn Central Transportation Company

STATEMENT OF CLAIM: Whether claimant, Robert A. McNamara was properly dismissed from the service of Penn Central Transportation Company on April 13, 1972 for allegedly violating Rule 113 of the Rules for Conducting Transportation and whether claimant, Mr. Robert A. McNamara, received a fair and impartial hearing and was adequately and properly represented at the investigation hearings held on April 5, 1972 and April 10, 1972 in the matter styled INVESTIGATION IN THE MATTER OF THE COLLISION OF MAINTENANCE OF WAY GAS CAR NUMBER 1003 and TRAIN HR-21.

The above investigation and dismissal resulted in the loss of wages and pension benefits for claimant.

OPINION OF BOARD: Claimant, a track foreman, was dismissed from service of the Carrier on April 13, 1972, following a hearing held on April 10, 1972. Claimant was found responsible for failing to operate a track car in accordance with Carrier's Rule 113, on the Inside Lead Track Harlem River Yard on April 3, 1972, resulting in a collision between the track car and a train. Claimant was restored to service as a track foreman on September 11, 1972, following an understanding reached between Carrier and the Organization that all time Claimant was held out of service would serve as a suspension for the violation of Carrier's Rule 113, which resulted in the above mentioned track car-train collision.

On April 19, 1976, Claimant filed Notice of Intention and subsequent ex parte submission, seeking redress as to whether a fair and impartial hearing was held involving the above subject matter and requesting that Claimant be reimbursed for loss of wages during the period of his suspension.

The Board, after careful consideration of the entire record and evidence therein, finds that the Parties to the controlling Agreement reached an understanding as to disposition of the initial claim submitted on the property and the instant claim is deemed to be moot. Moreover, the instant claim was not filed with this Board within the nine (9) month period following decision of Carrier's highest officer, as provided in the Parties' Agreement, to enable this Board to assume jurisdiction. Accordingly, for these reasons the claim must be dismissed.

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; and

That this Division of the Adjustment Board lacks jurisdiction over the dispute involved herein; and that the claim be dismissed.

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 January 1978.