

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22473
Docket Number MS-22551

George S. Roukis, Referee

PARTIES TO DISPUTE: (Luther Hogan
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my (Luther Hogan) intention to file an ex parte submission on covering an unadjusted dispute between me (Luther Hogan) and the Penn Central Transportation Company, for

Claim - 1 - Non payment of salary that I worked,
June 28 & 29 - 1972.

Claim - 2 - Non payment of 20 day vacation pay (earned
in 1971 - to have been given in August 1972.

Claim - 3 - Non issuance of Annual Pass.

Claim - 4 - Not paying into Retirement (Railroad) my
portion of retirement tax from my vacation salary,
creating a shortage in my retirement annuities."

OPINION OF BOARD: Our review of the record indicates that claimant's petition is procedurally defective. This Board is precluded from considering this claim on its merits since petitioner has not complied with Section 3, First (i) of the Railway Labor Act or Circular No. 1 of the National Railroad Adjustment Board. The Act requires the claim to be handled in the "usual manner on the property up to and including the chief operating officer of the carrier . . ."

Circular No. 1 requires 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."

Petitioner has not observed either requirement, but submitted this claim directly to us.

The National Railroad Adjustment Board was created as the dispositive appellate body in the hierarchial grievance settlement chain. It is not the forum of first instance in grievance assertions. In Third Division Award No. 22120, we held that,

"Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board require that disputes be handled in the usual manner as provided in the Parties' Agreement before they may be submitted to this Board for resolution. Inasmuch as Petitioners failed to progress the instant Claim in accordance with this prescribed procedure, we are barred from consideration of it. The Claim must be and is hereby dismissed."

(See also Third Division Awards 21627, 22318, 22304 and 22116 for similar analysis).

This decisional principle is applicable to the fact specifics of this dispute. For these reasons; we are compelled to dismiss the claim.

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;

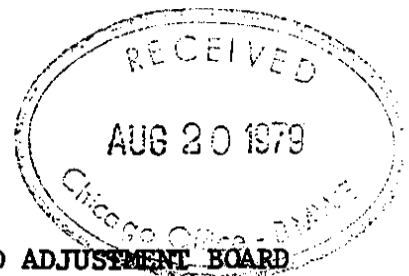
That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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. Parker
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.