

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23415
Docket Number MS-23261

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { Patrick O'Donovan
{ 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 intention to file an Ex Parte submission on November 1, 1979, covering an unadjusted dispute between my client and the Consolidated Rail Corporation involving the following questions:

1. Was Mr. Patrick O'Donovan, a crane operator with Conrail since 1960 (man #710050), properly treated at a 'trial' held by Conrail on June 18 and 20, 1975? Mr. O'Donovan was accused of various improper actions at work on June 10, 1975. After the trial of June 18 and 20, 1975, Mr. O'Donovan was suspended for 15 working days and was permanently disqualified from operating a crane in the electrified zone. and,

2. Is Mr. O'Donovan entitled to a displacement allowance pursuant to 45 USC Sections 771-779 from approximately April, 1976 to date? Since April, 1976, Mr. O'Donovan has met the prerequisites of 45 USC Sections 771-779 for a displacement allowance, but Conrail has refused to pay such an allowance, claiming that Mr. O'Donovan is still under 'discipline' from June, 1975 and is ineligible for such an allowance."

OPINION OF BOARD: Claimant, Patrick O'Donovan, was a crane engineer responsible to the M&W Department for the New York Metropolitan Region of the former Penn Central Transportation Company. He was charged on June 11, 1975, with failing to remain with his crane while it was in transit, leaving the crane in an unstable condition, and being responsible for the crane damaging company property.

A hearing was held on June 23, 1975. Claimant was found guilty as charged and assessed a fifteen (15) day suspension and disqualified from operating a crane in the electrified zone. He was notified of this decision on June 26, 1975. Claimant did not file a grievance under the schedule agreement, nor was Carrier notified of claimant's intent to challenge its decision in this case until October 1, 1979, when claimant's private attorney so notified Carrier by a copy of a letter he sent to Mr. A. W. Paulos, Executive Secretary, Third Division, National Railroad Adjustment Board. Claimant has never presented a grievance to Carrier or attempted to handle the dispute on the property in accordance with the schedule agreement.

This Board has been confronted in the past with numerous claims that were not processed on the Carrier's property, but placed at the outset before this Board. We have universally dismissed these claims as not meeting the requirements of Section 3, First (1) of the Railway Labor Act. See Third Division awards (22473), (21902), (22482), (22859). We see no reasons to depart from our findings in those cases in this instance.

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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

