

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23444
Docket Number MS-23295

Josef P. Sirefman, Referee

PARTIES TO DISPUTE:

{ Frank J. Zimmerman
{ Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an exparte submission on December 1, 1979, covering an unadjusted dispute between our client Frank J. Zimmerman and the Consolidated Rail Corporation, Penn Central Division, involving the question: Wrongful Discharge."

OPINION OF BOARD: Claimant Frank J. Zimmerman was employed by the Carrier on June 16, 1976 as a Trackman. On November 30, 1977 he was furloughed due to a reduction in force. The Claimant was notified on March 6, 1978 by certified mail of recall, but the letter was returned by the Postal Service to the Carrier as "unclaimed". A second certified letter of recall, April 21, 1978, was mailed to Claimant notifying him, under Rule 29-C of the Agreement that failure to report or provide proper reason for not doing so under the provisions of the Agreement would result in a forfeiture of seniority and protection. This letter was also returned to the Carrier by the Postal Service as "unclaimed". Some time later Claimant sought to return to work and was advised of the forfeiture. In November, 1979 Claimant's attorney filed a submission directly with the Third Division, NRAB.

A review of the record establishes that the claim was not processed in the "usual manner" under the applicable agreement. Accordingly, Claimant did not comply with the mandates imposed by Section 3, First, (i) of the Railway Labor Act and we have no recourse but to dismiss the claim (Award 21902).

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.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *A. W. Paulos*
Executive Secretary

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

