

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23448
Docket Number MS-23445

Herbert Fishgold, Referee

PARTIES TO DISPUTE:

{ W. C. Damske
{ Chicago, Milwaukee, St. Paul and Pacific
{ Railroad 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 covering an unadjusted dispute between me and the Milwaukee Railroad involving the question:

The Carrier in violation of rules 1, 2, 3, 4 and 5 of Brotherhood of Maintenance Way Agreement Form 2625 of September 1, 1967. Hiring outside Contractors Tindall Construction Company Lewistown, Montana. For loading rock at Company owned rock quarry at Montague Montana. For purpose of riprap."

OPINION OF BOARD: The Board cannot reach the merits of the dispute because of jurisdictional issues.

The record is clear that the claim was not handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes, as required by Section 3, First (1) of the Railway Labor Act, Circular No. 1 of the National Railroad Adjustment Board, and Rule 47 of the applicable collective bargaining agreement.

The Carrier also contends that the claim was not discussed in conference on the property, which has been held to be a mandatory prerequisite to invoking the jurisdiction of this Board. Awards 17166, 19620, 19709, 20574, 20757, 21440, 23023.

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

Claim be dismissed.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.

