

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23569  
Docket Number MS-23853

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Harold F. Fulton  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "That I am being denied my seniority rights, given to me through agreement between Conrail and The Brotherhood of Railway and Airline Clerks, in the arrangement presently being used in the assignment of vacation periods."

OPINION OF BOARD: Our review of the record establishes that Claimant's petition is procedurally defective. The Board is precluded from considering the claim on its merits, since Petitioner has admittedly not complied with Section 3, First (1) of the Railway Labor Act or Circular No. 1 of the N.R.A.B. 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 ...". The same requirement is incorporated in the Board's Circular No. 1.

Petitioner has not observed this requirement and for that reason the claim must be dismissed. See Awards 22120 and 22304.

Even if, arguendo, we could avoid the procedural defect, we would be required to deny the claim on its merits, for the simple reason that Claimant was initially afforded the opportunity of selecting his vacation preference and the assignment of vacation dates was done in cooperation with the local committee as mandated by Section 4 of the National Vacation Agreement, as amended.

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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By *Rosemarie Brasch*  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

