NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award Number 24010
Docket Number MS-24587

PARTIES TO DISPUTE: (Peggy Benda
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: $610.46 in back pay illegally withheld from Peggy Benda's paycheck

OPINION OF BOARD: Claimant Peggy Benda commenced service with Missouri Pacific Railroad Company as a Secretary on July 17, 1981. Claimant served notice as required by rules of the National Railroad Adjustment Board, of intention to file ex parte submission relative to a dispute between herself and Carrier. The Carrier filed a submission for consideration by the Board and they argue that this Board lacks jurisdiction to adjudicate the claim since it was not handled on the property in accordance with agreed-upon procedures established under Rule 43 of the current Agreement and as required by the Railway Labor Act.

The relevant portion of Section 2, First and Second of the Act states:

> "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort ...to settle all disputes..." 45 U.S.C. §152, First.
>
> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the Carrier or carriers and by the employees thereof interested in the dispute." 45 U.S.C. §152, Second.

Section 3, First (i) of the Act mandates that all disputes between an employee and a carrier, "...be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes..." 45 U.S.C. §153, First (i). Section 301.2(b) of the Rules of Organization and Procedure issued by the National Railroad Adjustment Board as Circular No. 1, October 10, 1934, states:

> "(b) 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." (Emphasis Added)

The record before us clearly demonstrates that claimant failed to bring her claim through the various levels of appeal on the property up to the highest designated Carrier officer. The Claimant did not make reasonable efforts to settle the dispute or engage in a conference with Carrier representatives as required by

the Railway Labor Act. This Board lacks jurisdiction to consider the merits of any dispute unless it has been handled in accordance with the above cited sections of the Railway Labor Act and Circular No. 1. Third Division Award No. 19790 (Brent). Thus, we must dismiss the claim.

FINDINGS: Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That hearing as requested was held and concluded;

That the Carrier and the Employes 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 disput 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 17th day of September 1982.