

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award Number 24191
Docket Number MS-24697

PARTIES TO DISPUTE: (A. F. Henninger
(
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM: "(a) The Southern Pacific Transportation Company violated the rules agreement effective September 15, 1971, particularly Section 5(a) of the Union Shop Agreement made on February 4, 1953, effective March 1, 1953.

(b) That Claimant A. F. Henninger should be allowed eight (8) hours pay at the straight time rate of pay allowed for his position as Agent, Warm Springs, California, commencing September 8, 1981, and continuing each day thereafter until violations cease.

(c) That Claimant A. F. Henninger should be allowed eight (8) hours pay at the overtime rate of pay allowed for his position as Agent, Warm Springs, California, commencing September 8, 1981, and continuing each day thereafter until violations cease.

(d) That Claimant A. F. Henninger should be allowed all lost fringe benefits lost subsequent to September 8, 1981, including but not limited to 'Health and Life Insurance.'

(e) That Claimant A. F. Henninger shall have all his seniority rights restored to him."

OPINION OF BOARD: Our review of the record indicates that the instant claim is procedurally defective in that it was not handled in the usual manner for handling such disputes on the property under the applicable agreement. The record is clear that this claim was appealed directly to the Board from the decision of an intermediate official, it was never handled with Carrier's highest officer designated to handle disputes. In our Award 23579 we stated:

"In order to vest jurisdiction in this Board, the claim must be progressed in accord with the provisions of the Railway Labor Act, 45 U.S.C. §151 et seq. 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. S152, 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. S152, 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. S153, 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 his 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."

We will follow Award 23579 and dismiss the claim.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 31, 1934;

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

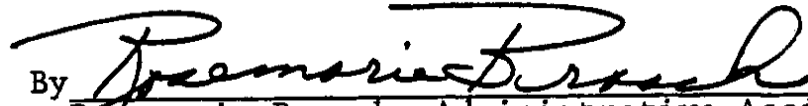
That the claim is barred.

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, Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.