

THIRD DIVISION

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Robert L. Delaney
{ Burlington Northern 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 November 24, 1980 covering an unadjusted dispute between me and the Burlington Northern Railroad involving the question:

On April 15, 1979 I was fired from my position as section hand on the Burlington Northern Railroad at Missoula, Montana without an investigation as required under Rule 40 of the agreement between Burlington Northern, Inc. and the Brotherhood of Maintenance of Way Employees. I had been employed by the Burlington Northern for several years prior to that date.

I therefore request re-instatement, with no loss of seniority, and wage loss compensation."

OPINION OF BOARD: We cannot consider the merits of this dispute, and have no alternative but to dismiss the claim based on the irreversible procedural flaw of the record failing to show requisite on-property conferences had been held prior to invoking the jurisdiction of this Board. In this regard, Section 2, Second, of the Railway Labor Act requires that "all disputes ... shall be considered ... in conference". Moreover, Section 3, First (1) of the Act stipulates that disputes growing out of grievances or out of the interpretation or application of agreements "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes". It does not provide for disputes to be handled or filed direct with the divisions of the Adjustment Board. Further, regulations of the Board require full compliance with procedures set forth in Circular No. 1 governing the processing of claims on the property before being submitted here on appeal. As this Board has stated on previous occasions, these provisions are mandatory and not susceptible of avoidance because of extenuating circumstances.

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.

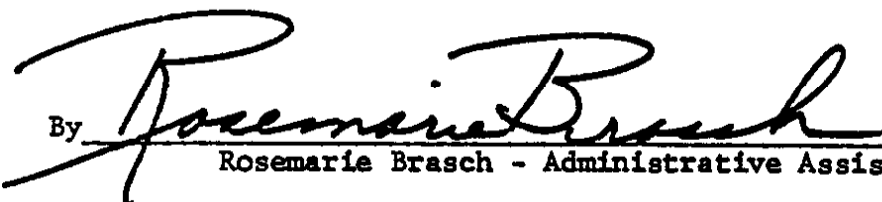
A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

