NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24363
Docket Number MS-24626

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Matthew Kent
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(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Matthew Kent, 249 Bond Street, Elizabeth, Union County, New Jersey, by way of Petition against Respondent, says:

1. Petitioner Matthew Kent was an employee of Respondent, who was laid off on December 14, 1979.

2. On July 21, 1980, Petitioner was notified by Respondent that, under the terms of an agreement between Respondent and the union, positions were available and that he was required to apply for these positions or give a satisfactory reason for not applying. In the event he did neither, he was notified that he would be considered out of service and would forfeit his seniority.

3. On July 25, 1980, Petitioner notified Respondent that he was not available for employment at that time because of an injury sustained in an automobile accident on July 10, 1981.

4. On August 4, 1980, Respondent notified Petitioner that in order for him to retain his rights as a Trackman with Conrail, he would have to forward a medical report to Respondent. On September 3, 1980, Petitioner forwarded a medical report to Respondent.

5. On December 16, 1980, Petitioner notified Respondent that he was able to return to work. He was told that there were no positions open at that time. On December 22, 1980, Respondent was notified again that Petitioner was able to return to work.

6. In March, 1981, Petitioner gave Respondent a note from his doctor releasing him for work.

7. Subsequent to this date, Respondent hired employees who had no or less seniority than Petitioner in violation of the Union agreement.

WHEREFORE, Petitioner demands Judgment against Respondent for the following:

(a) Reinstatement in his employment with Respondent with the same rights and benefits as if he were re-employed in March, 1981.

(b) Back wages plus interest.

(c) Attorney fees and costs.

(d) Any other relief the Board deems equitable and just."

OPINION OF BOARD: The record is clear that the claim Petitioner is attempting to assert before the Board was not handled in the usual manner on the property of the Carrier in accordance with the applicable provisions of the collective bargaining agreement, and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The claim is, therefore, barred from consideration by the Board and will 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 Employes involved in this dispute are respectively Carrier and Employes 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 be dismissed.

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 13th day of May 1983.