

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26217
Docket Number MS-26250

John E. Cloney, Referee

PARTIES TO DISPUTE: (George L. Burks
(
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"I, George L. Burks, here identified as Petitioner, do hereby make a Claim for loss of pay, two (2) on the job injuries, loss of home, loss of privately owned automobile, expenses incurred for moving, loss of wages due to employees with seniority."

OPINION OF BOARD: By letter dated August 1, 1984, the Organization filed Claim in the amount of \$158.70 on behalf of Claimant "account him not being reimbursed for auto mileage he incurred on behalf of the Carrier." The basis was Claimant's contention that Foreman Amos had requested that he use his personal auto to haul some employees to and from a job site during the period March 19, 1984 - March 30, 1984. By letter dated September 27, 1984, the Regional Engineer declined the Claim. On October 25, 1984, the General Chairman advanced the Claim and on December 3, 1984, the Carrier declined it, contending Claimant had not been authorized to use his vehicle. Thereafter conference was held on the property.

On March 4, 1985, Claimant served his Notice of Intention to file an Ex Parte submission. It stated:

"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 within thirty (30) days of the date of this notice, covering an unadjusted dispute between me and the Southern Pacific Railroad Company involving the question:

- A. Travel expenses
- B. Two (2) on the job injuries
- C. Erroneous suspensions
- D. Withholding of wages
- E. Loss of residence
- F. Storage of household goods
- G. Moving expenses
- H. Loss of vehicle
- I. Damage to vehicle
- J. Loss of refrigerator
- K. Medical and dental expenses
- L. Loss of wages"

In a Statement of Claim, the Claimant noted:

"I, George L. Burks, here identified as Petitioner, do hereby make a Claim for loss of pay, two (2) on the job injuries, loss of home, loss of privately owned automobile, expenses incurred for moving, loss of wages due to employees with seniority.

STATEMENT OF FACTS:

Southern Pacific Transportation Company has deliberately acted in collusion to bring forth the above mentioned damages toward the petitioner. Each document will prove that the carrier was notified of my claim, also in excerpts from transcripts of hearings, the statements made by the officers in charge will show how they lied and manipulated others to go along with them in an effort to discharge me from employment and deliberately make me suffer financial damages, stress, and undue hardship.

It is with sincere anticipation that I request an oral hearing before the Third Division of the National Railroad Adjustment Board."

Numerous attachments to the Ex Parte submission deal with earlier and distinct Claims made against Carrier, as well as Public Law Board Awards, Equal Employment Opportunity Commission litigation and related matters pertaining to Claimant's employment.

Carrier contends the Claim as presented to the Board by Claimant is not the same Claim as that handled on the property by the Organization. Thus the Claim as presented has not been handled as required under Section 3, First (i) of the Railway Labor Act. As the Rules of Procedure of the Adjustment Board provide:

"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."

Carrier contends the Claim is barred and this Board lacks jurisdiction.

In this connection Claimant maintains "For every Claim I have made, I have submitted or I can submit a written document for substantiation."

In Agreement with the Carrier this Board finds that matters referred to in Items B through L of Claimant's Ex Parte submission were not raised on the property, or if they were at some time in the past, they were not progressed as Claims in the required manner.

As this Board has held on numerous occasions in the past, and recently in Award 25081:

" . . . the Claimant never handled this matter on the property, never conferred with Carrier representatives there nor appealed their actions at any level below this Board. There are numerous awards to the effect that the Board may not consider matters brought to them without following the agreed upon prior procedures"

To the extent the Claim for "A. Travel Expense" may be understood to refer to the Claim presented on the property, we note no evidence was produced to establish Claimant was authorized to use his vehicle as contended. Claimant has not met his burden of proof.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of January 1987.