

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31685
Docket No. MS-31786
96-3-93-3-774**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(J.J. Shuman

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Harassed to the point of mental distraction in order that theft and a poor system could continue to go undiscovered. The starting date of this claim is July 3, 1984.

Position of employee: There can be no joint statement due to the collusion between some Conrail management and some union officials. I am unable to comply with the requirement to refer to specific rules violations by designated number due to labor/management cooperation which would not allow the union to represent me as they pretended to represent me. Likewise, documentation is sparse since labor-management dictated that my position should not be documented. In fact all efforts towards documentation were directed to cover up fact rather than establishing and correcting errors.

Position of Carrier: My experience shows that Conrail's point is: nothing happened, no one was there, the case began in July 1991 and there is no case, no theft occurred, they practiced equal opportunity, all employees were well trained and happy, and I have no valid points.

Position of union: the case is without merit, and they did everything to represent me, and my 'case are not sufficiently meritorious.'

General: If Conrail wants an oral hearing I will attend; however, ultimately the National Railroad Board of Adjustment can do for me is reduce my sentence, this is unlikely and inadequate. I feel there are very valuable lessons to be learned with regards to intentional mismanagement, sham equal opportunity; but the biggest lesson is mans inhumanity to man while hiding behind respectability, responsibility, and authority.

The idea of full disclosure and due process are of the utmost importance. However, before these ideas can be implemented a comprehensive investigation must take place.

Awards: If I learned one thing in my 40 years of existence it is that groups make important decisions in an anonymous fashion, without concern for accountability or responsibility are responsible for the vast majority of atrocities in recorded history. With this in mind I request that the board give up its right to anonymity and sign their decision individually."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said disputes were given due notice of hearing thereon.

A careful review of the instant case requires the Board to dismiss this claim for procedural defects. Our jurisdiction is limited by the requirements set forth by Section 3, First (I) of the Railway Labor Act, as amended, and Circular No. 1 of the National

Railroad Adjustment Board. This Board may only decide those cases which were presented on the property in the "usual manner" within the Rules of Agreements.

The history of this dispute indicates that a very different claim was presented and appealed on the property up to and including the Carrier's highest designated officer. That claim was an appeal of excessive discipline for "failure to comply with instructions" and "unauthorized absence". However, there is no relationship between the appeal before this Board and that which was pursued on property. The claim is therefore procedurally defective.

Additionally, Rule 43 requires appeal to this Board within one year of denial by the highest designated Carrier officer. The Claim was denied by the Senior Director Labor Relations in letter dated June 24, 1992. The claim filed with this Board was dated December 25, 1993. The claim is therefore also fatally flawed on time limits.

Due to the fact that the claim before this Board shows no relationship to the claim pursued on property and the fact that it was not timely appealed, the claim must be dismissed on procedural grounds. If, however, we had addressed the merits, it is clear that the Claimant was guilty of an unauthorized absence and the penalty imposed by the Carrier was appropriate.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 29th day of August 1996.