

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32981
Docket No. MS-32367
98-3-95-3-209**

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

(Iser C. Gathings

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"I was taken out of service for two (2) years due to an error on Conrail's part. This occurred during the period of September of 1990 thru November 1990, and April 1991 thru November 1991. This was seasonal work and I lost ten (10) months of pay. Also time was lost towards my retirement and my vacation.

This dispute started when I received my re-call letter advising to report back to work within 10 days. When I went to get my physical, the proper papers were not signed by the re-call supervisor, therefore delaying the physical, which had to be re-scheduled. The re-scheduling put me past the 10 days I had to report back to work.

I am seeking the reimbursement of wages lost. Also time lost towards vacation and retirement."

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 dispute were given due notice of hearing thereon.

Claimant in this dispute seeks lost pay and service time for pension and benefit purposes for two periods in 1990 and 1991 during which he asserts he was wrongfully withheld from service for failure to timely complete required recall procedures, including the taking of a return-to-work physical.

Carrier contends that despite receiving notification of its action by certified letter dated October 26, 1990, Claimant neither filed a claim nor otherwise protested Carrier's action in forfeiting his seniority even following his reinstatement as a new employee effective August 2, 1992.

The record reveals that while there is disagreement regarding the filing of an initial claim, if a claim were filed it was never progressed on the property in accordance with the requirements of the Railway Labor Act. As the Carrier correctly points out, Section 3 First (i) of the Act requires that claims "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." Precedent clearly establishes that "exhaustion of the collectively bargained grievance machinery on the property is a condition precedent to proper invocation of our jurisdiction under Section 3, First of the Railway Labor Act." (Third Division Award 28035).

Because Claimant did not progress this dispute on the property up through the Chief Operating Officer designated to hear the case, it was not "handled in the usual manner." Thus the Board lacks jurisdiction to consider its merits. Under the circumstances, our only alternative is to dismiss the claim.

AWARD

Claim dismissed.

Form 1
Page 3

Award No. 32981
Docket No. MS-32367
98-3-95-3-209

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 23rd day of December 1998.