

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24159
Docket No. 43806
92-1-91-1-C-4556

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

(United Transportation Union

PARTIES TO DISPUTE:

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(CSX Transportation, Inc. (formerly the Chicago and
(Eastern Illinois Railroad Company)

STATEMENT OF CLAIM:

"Claim of Trainman T. A. Hicks for reinstatement to the service with seniority rights and benefits unimpaired. Claim includes pay for all time lost commencing with February 6, 1990, and thereafter until restored to full service."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

By certified letter dated February 7, 1990, Claimant was notified to attend an Investigation alleging possible responsibility for a violation of Rule G. Following a postponement, the Investigation was held on February 19, 1990. Subsequently, Claimant was found guilty as charged and dismissed from the service of the Carrier.

The Board is compelled to reach its decision without consideration of the merits. By letter of March 21, 1990, the Carrier noted that the Claimant did not file an appeal with the appropriate Carrier officer designated for appeals. The Claimant's appeal had been dated to the Superintendent of Operations on March 12, 1990. On May 16, 1990, the Claimant attached a copy of a nearly identical letter indicating appeal to the appropriate Carrier officer had been made and stating that the disputed letter was a duplicate sent as a courtesy. Even if such were the case, which the Carrier denies, and for which this Board finds insufficient proof, the appeal date violates the time limits of the Agreement. Article 39, Section 1(i) of Schedule 11 provides twenty (20) days to appeal to the highest Carrier officer. This did not occur.

Additionally, the burden of proof has not been met to demonstrate that the usual handling required by Section 2, Second and Section 3, First (i) of the Railway Labor Act, as amended was followed in the case at bar. The Claimant, who handled his own case, has failed to prove that the procedural requirements of the Act were met. There is insufficient proof that a conference was held on the property. The submitted intraorganizational correspondence does not carry sufficient probative weight to carry the burden of proof (First Division Awards 22718, 22428, 22101).

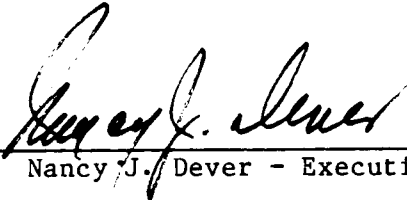
Accordingly, it is not possible for this Board to reach the merits of the case. Based upon the record, the Claim is procedurally defective and must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1992.