

In view of the foregoing, the claim should be dismissed for lack of jurisdiction or denied for the reason that it is not supported by the rules of the Agreement.

The correspondence between the parties has been quoted in this submission. No conference has been requested or held between the representatives of the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends that the Board does not have jurisdiction in this matter because no conference on the claim was held or requested by the Employes on the property; and the factual basis for this position is not disputed. The same jurisdictional issue was determined by dismissal Award 10939 involving the same parties. We reach this result for the reasons stated below.

The jurisdiction of this Board is defined in Section 3, First (i) of the Railway Labor Act which reads as follows:

“The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.”

The United States Supreme Court has clearly indicated that under this provision of the Act recourse to this Board is conditioned upon compliance with and performance of the duty to negotiate on the property concerning the dispute. In *Brotherhood of Locomotive Engineers v. Louisville and Nashville Railroad Company*, No. 94, October Term, 1962, decided April 29, 1963, 88 S. CT. 1059, 1061, 52 LRRM 2944, 2945 (not yet officially reported) the Court said:

“The statute governing the central issue in this case is Section 3 First of the Railway Labor Act covering so-called ‘minor disputes’. The present provisions of Section 3 First were added to the Act in 1934. The historical background of these provisions has been described at length in previous opinions of this Court . . . As explained in detail in those opinions, the 1934 amendments were enacted because the scheme of voluntary arbitration contained in the original Railway Labor Act had proved incapable of achieving peaceful settlements of grievance disputes. To arrive at a more efficacious solution, Congress, at the behest of the several interests involved, settled upon a new detailed and comprehensive statutory grievance procedure.

“Subsections (a) to (h) of Section 3 First create the National Railroad Adjustment Board and define its composition and duties, Subsection (i) provides that it shall be the duty of both the carrier and the union to negotiate on the property concerning all minor disputes which arise; failing adjustment by this means, ‘the dispute may

be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . .” (Emphasis ours.)

It is clear from the Court's interpretation of subsection (i) of Section 3 First that the Employees were under a duty to negotiate on the property concerning the claim now presented here and that the procedures of this Board do not become available unless there has been a failure of “adjustment by this means.” It is also clear, and there is no need for citation of authority in this regard, that such duty to negotiate includes the obligation to seek to meet and confer on the property concerning the claim. Since the Employees failed to satisfy this statutory prerequisite for recourse here, the Board is without jurisdiction with respect to the petition on the claim filed by the Employees.

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 does not have jurisdiction over the dispute involved herein; and

That the claim should be dismissed for lack of jurisdiction in accordance with the Opinion.

AWARD

Claim dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1963.