

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24259  
Docket Number m-23880

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Robert L. Delaney  
(Burlington Northern Railroad Company -----)

STATEMENT OF CLAIM: "Ibis is to serve notice as required by the rules of the National Railroad **Adjustment** Board, of **my** intention to file an ex **parte** submission on November **24, 1980** covering an unadjusted dispute between me and the Burlington Northern Railroad involving the question:

On April 15, **1979** I was fired from **my** position as section **hand** on the Burlington Northern Railroad at **Missoula**, Montana without an investigation as required under Rule **40** of the **agreement between Burlington Northern, Inc. and the Brotherhood of Maintenance of Way Employees**. I had been employed by the Burlington **Northern** for several **years** prior to that date.

I **therefore** request re-instatement, with no loss of seniority, end wage loss compensation."

OPINION OF BOARD: We cannot consider the **merits** of this dispute, and have no alternative but to dismiss the **claim** based on the irreversible procedural flow of the record failing to show requisite on-property conferences had been held prior to invoking the jurisdiction of this Board. In this regard, **Section 2, Second, of the Railway Labor Act** requires that "all disputes . . . shall **be considered** . . . in conference". **Moreover**, Section 3, First (i) of the Act stipulates that disputes growing out of grievances or out of the interpretation or application of agreements "shall be handled in the usual manner up to end including the chief operating officer of the carrier designated to handle such disputes". It does not provide for disputes **to be handled or filed direct with the divisions of the Adjustment Board**. Further, regulations of the Board require full **compliance with procedures** set forth in Circular No. 1 **governing the processing of claims** on the property before being submitted here on appeal. As this Board has stated on previous occasions, these provisions are mandatory end not susceptible of avoidance because of extenuating **circumstances**.

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

That the parties waived oral hearing;

That the Carrier end the **Employees** involved in this dispute are respectively Carrier and **Employees** within the weaning of the Railway Labor Act, es approved June 21, **1934**;

That this **Division** of the Adjustment Board has jurisdiction **over** the dispute involved herein; and

That the Claim is barred.

A W A R D

**Claim dismissed,**

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

Attest: Acting Executive Secretary  
**National** Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

