

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 24759
Docket Number MS-24098

Wesley A. **Wildman**, Referee

(Frank D. Stevens

PARTIES TODISPVTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"**Prior** to March 4, 1981 I had been a Signal Construction Foreman with headquarters at Warsaw, New York. On March 4, 1981 my headquarters was changed from Warsaw, New York to Attica, New York. Under this move I came under Rule 10 of the Agreement Between Erie **Lackawanna** Railway **Company** and Signal apartment Employees Represented by Brotherhood of Railroad Signalmen Effective January 1, 1974. On the morning of March 4, 1981 at 7:00 A.M. I exercised my rights and displaced **Tom** Quigley, Foreman of Maintainers at Attica, New York. At **about 11:00** A.M. of that morning I was notified by my Signal Supervisor, Donald **Hockenberry** at **Hornell**, New York that he had been advised by General Chairman of B.R.S. of A., B.E. Britcher, that I could not exercise Rule 10 at the same headquarters that they were moving me to. I next called Mr. Jack Stewart of **Labor** Relations, Conrail in Philadelphia. He read Rule 10 and interpreted it the same as I, that I could displace the Foreman of Maintainers at Attica. I told him about my phone. conversation with Mr. Hockenberry in regard to Rule 10. I told him that Mr. Hockenberry and Mr. Britcher refused to let me work the job. He advised me to write it up. Then he said to call Mr. John Blake of Labor Relations, Atlantic Region of Conrail in Newark, New Jersey, which I did. Mr. Blake agreed with with **(sic) me** on my interpretation of Rule 10. He said he would call my Signal Supervisor, Mr. Hockenberry and then call me back. I waited for the call and **Mr. Robert Snowden**, Mr. **Hockenberry's** clerk called me **and** said Mr. Blake agreed with Mr. Britcher after his conversation with Mr. Hockenberry. Nowhere in Rule 10 does it state that I can only displace employees in certain places."

OPINION OF BOARD: There is **no** evidence on the record before us that petitioner Stevens ever filed a proper grievance on his claim, as is required under the collective bargaining agreement to which he is subject (see Rule 34 of Agreement between E.L.R.C. and Signal Department Employees represented by B.R.S., effective January 1, 1974). Presumably as a result of **this** initial failure, the claim asserted here has not been processed as required by applicable law and Adjustment Board regulations.

Section 3 First **(i)** of the Railway Labor Act requires that claims be handled "**...in the usual manner** up to and including the chief operating officer of the carrier...". Circular No. 1 of the National Railroad Adjustment Board requires that:

"No petition shall be considered by any Division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

As neither the applicable contract, the law, nor the regulation has been complied with here the Board has no jurisdiction in this matter and must dismiss petitioner's claim as **being** fatally defective procedurally.

innumerable decisions of this **and** other Divisions have established that the Board cannot exercise jurisdiction over a direct petition when the **requirements** of contract, the law, and regulations of the **Board** for proper processing have not been complied with. (See, for instance, **Third** Division Awards, numbers 22473, 22482, and 22481.)

The requirements of collective bargaining contract **and** the law that a claim be processed "...in the usual manner..." on "the **property**" are much more than mere procedural niceties. If a grievance is not properly filed and processed. the underlying issue is never subjected to necessary adversarial testing. Moreover, of critical significance is the fact that no record is generated to be used as a basis for this **Board's** essentially "appellate" deliberative **and** decision-making processes.

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;

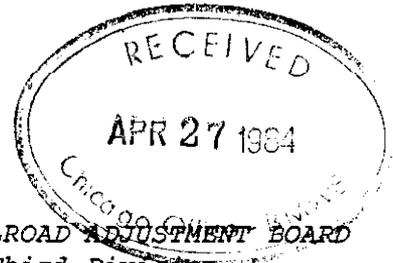
That the Carrier and the **Employees** involved in this dispute are **respective** Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment **Board** does not have **jurisdiction** over the dispute **involved** herein; and

That the Claim is barred.

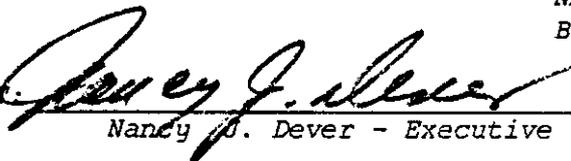
A W A R D

Claim dismissed.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984