

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31389
Docket No. SG-31075
96-3-92-3-939

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Delaware & Hudson Railroad (D&H):

Claim on behalf of D. C. McClements, Jr., for reinstatement to service with payment for all time lost account Carrier violated the current Signalmen's Agreement, particularly Articles 8.1 and 12.1, when it dismissed the Claimant without holding a fair and impartial investigation after the Claimant had been in service more than ninety (90) calendar days. BRS File Case No. 8860-D&H."

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 waived right of appearance at hearing thereon.

There exists in this case a jurisdictional contention which must be addressed as a threshold matter. Carrier argues, and the Organization does not refute Carrier's argument, that no conference was ever held on the property to discuss and consider this claim. The Board's review of the record submitted by the parties confirms Carrier's contention.

Section 2, Second, of the Railway Labor Act, as amended, expressly requires that all disputes must be considered "in conference" before they may properly be submitted to this Board. This issue has been addressed by a legion of Awards of this Board as well as by decisions of the U.S. Supreme Court. Representative of these decisions is Third Division Award 14873, which correctly held that:

"No matter how futile a conference may be, a conference must be held on the property prior to submission of a claim to this Board. Otherwise, this Board has no right to consider the claim in question."

The duty of holding a conference on the property before submitting a dispute to this Board was defined by the U.S. Supreme Court in E. J. and E. V. Burley, 325 US 721, as follows:

"This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required."

Accordingly, there exists no possible resolution of this dispute on its merits because the Board lacks jurisdiction to consider them. The claim is, therefore, dismissed.

AWARD

Claim dismissed.

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 29th day of February 1996.