

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**Award No. 26738  
Docket No. 46682  
09-1-NRAB-00001-070089  
07-1-89**

The First Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**PARTIES TO DISPUTE:** ( **(Brotherhood of Locomotive Engineers and Trainmen**  
**(South Buffalo Railway Company**

**STATEMENT OF CLAIM:**

**“Removal of ten days actual suspension assessed to engineer Donald Czapla for the alleged violation of NORAC Rule T, in connection with the charge of allegedly refusing a call to report for duty for a 7:00 a.m. starting time while employed as an engineer on Wednesday, January 11, 2006, with all notations of discipline expunged from Claimant’s personal work record and compensation for all lost time, including time spent attending the investigation.”**

**FINDINGS:**

The First 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 were given due notice of hearing thereon.

On January 13, 2006, the Claimant was instructed to attend an Investigation in connection with the charge that he violated NORAC Rule T when he was

assigned as an Engineer on the Extra Board and refused a call for duty for a 7:00 A.M. assignment on January 11, 2005.

The Investigation was held on February 7, 2006, with the Claimant in absentia. The Claimant's Organization representative was present at the Investigation and did participate therein. Later that day, a second Investigation was held in connection with charges in another matter that ultimately led to the Claimant's dismissal.

Following the instant Hearing, the Claimant was assessed a suspension of ten working days.

On February 26, the BLET General Chairman wrote to the Carrier expressing the Organization's dissatisfaction with the disciplinary decision and requesting a consultation on the matter. The Carrier responded on March 7, reminding the General Chairman of the appeal processes of Article 18.6 of the Agreement and asking whether the February 26 letter was to be considered an appeal or a request for leniency. On March 9, the Organization responded that it wanted a conference to "appeal for leniency."

There is no evidence in the record to confirm that a conference was ever held to discuss the matter. There was a conference on May 24, 2006, but it appears that this concerned a dismissal case involving the Claimant. There is no evidence that the parties discussed the instant suspension case at that conference. On the contrary, the Carrier's May 26, 2006 letter denying the Organization's appeal for leniency explicitly references only the Claimant's dismissal case.

After that point, the record shows that no further action was taken by the Organization until March 31 when it notified the Carrier of its Notice of Intent dated March 28, 2007 filed with the First Division of the Board.

The Carrier contends that the Board lacks jurisdiction to decide this dispute on the merits and it must be dismissed. Based on our review, we find that the Carrier's argument is well taken.

Section 3 First (i) of the Railway Labor Act states that disputes “. . . shall be handled in the usual manner, up to and including the chief operating railroad officer of the carrier designated to handle such disputes; . . .”

Several factors compel the conclusion that the instant claim was not handled in the “usual manner.” First, there is considerable doubt as to whether the Organization ever filed a formal appeal of the discipline assessed the Claimant. The February 26, 2006 letter from the BLET General Chairman merely indicated his dissatisfaction with the decision to discipline the Claimant – there was no basis cited for appealing the discipline and no request for reinstatement or pay for time lost as contemplated by the Agreement provisions which govern discipline matters on this property.

Second, even if the Organization’s February 26, 2006 letter could be construed as a formal appeal of the discipline, the Organization thereafter indicated that it was seeking a conference to “appeal for leniency.” A conference was subsequently held on May 24 at which the Organization’s request for leniency in the Claimant’s dismissal case was discussed and denied. However, there is no evidence that this case was conferenced on the property. As the Carrier points out, prior Awards have held that the failure to conference is a jurisdictional defect that precludes the Board’s consideration of the claim. See First Division Awards 24639 and 26093.

Third, it is clear that the case was not timely listed to arbitration. Rule 17.3 of the Agreement states that the Carrier’s decision in disciplinary matters is final and binding unless proceedings to an arbitral tribunal are initiated within six months from the date the highest designated officer’s decision is mailed to the employee or his representative. Even if we were to view the Organization’s case in its most favorable light and find that the Carrier’s May 26, 2006 letter could be viewed as encompassing a denial of the Organization’s appeal for leniency in this case, the filing of a Notice of Intent to the Board was not submitted until March 28, 2007, well beyond the six-month time limit.

The Organization stated in its Submission that “. . . by agreement between the parties, all time limits contained in the Collective Bargaining Agreement (CBA) were held in abeyance during the on-property handling of this dispute.” The Board

carefully reviewed the record in its entirety, and found no evidence of an agreement to extend the time limits.

For all these reasons, the Board lacks jurisdiction to review the case. It was not handled in the usual manner and was not timely appealed to arbitration. Therefore, the claim must be 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 First Division**

Dated at Chicago, Illinois, this 5th day of February 2009.