

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (Clayton R. Suggs, Jr.
(Southern Railway Company

Dispute: Claim of Employes:

1. That at the Asheville, North Carolina Station on the following dates, the Company violated the controlling agreement when student electrician, R. Freck, was assigned to perform the duties of journeyman electrician when electrician, Clayton R. Suggs, Jr., was available for work that day:

1983

July 23
July 30
August 6
August 7
August 13
August 17
August 18
August 19
August 20
August 27
September 3
September 8
September 10
September 17
September 24
October 1
October 8
October 12
October 13
October 22
October 29
November 1
November 2
November 5
November 12
November 19
November 26
December 3
December 7

December 10
December 11
December 13 - 20
December 24 (First Shift)
December 24 (Second Shift)
December 26 - 28
December 31

1984

January 1 - 4
January 7
January 8

2. That at the Asheville, North Carolina station the Southern Railway System violated the controlling agreement when student electrician, R. Freck, was assigned to perform the duties and responsibilities of electrician foreman when electrician, Clayton R. Suggs, Jr., was available for work on the following days:

1983

July 24
July 31
August 13
August 14
August 21
August 28
September 4
September 11
September 18
September 25
October 2
October 3
October 6
October 9
October 16
October 17
October 23
October 24
October 30
November 6
November 13
November 20
November 27

1984

January 15
January 22 (First Shift)
January 22 (Second Shift)
January 29
February 5
February 12
February 19
February 26
March 4

3. That electrician, Clayton R. Suggs, Jr., be compensated for 8 hours at the overtime rate for each date that student electrician, Freck, was assigned the duties of journeyman electrician listed above in violation of the controlling agreement.

4. That electrician, Clayton R. Suggs, be compensated at the applicable rate of pay for foreman for each date listed in paragraph 2 above as student electrician, Freck, was assigned these duties and responsibilities in violation of the controlling agreement.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Claimant claimed a student performed the work of a Journeyman on 45 separate occasions; and the same student Electrician performed the work of an Electrician Foreman on 32 separate occasions, claiming violations of Rule 43, Rule 123, and Section 4(c)(4) of the Student Training Agreement.

The Carrier raised a threshold issue in that Rule 35, Section 3, states in pertinent part:

"...All claims or grievances involved in a decision by the highest officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board..."

"...It is understood, however, that the parties may by agreement in any particular case extend the 9 month period herein referred to..."

It is undisputed that the General Chairman and the Carrier's Assistant Director of Labor Relations agreed to extend the time limits of Rule 35, Section 3, until September 15, 1985. The Claimant was advised of this and also advised as to the appropriate way to file his Claim before the National Railroad Adjustment Board. It should be noted the Claimant is represented by private counsel. The records indicate the Claimant did not file his Claim with the National Railroad Adjustment Board until November 25, 1985. This is confirmed by the Executive Secretary. The Claimant argued that he had to appear without the help of his General Chairman; he was given the wrong phone number of the National Railroad Adjustment Board; and, therefore, he was unsure as to how to proceed. The Board finds absolutely no merit to these arguments. The Claimant was given an extension in order to properly file. If one does not have the appropriate phone number, which is absolutely unnecessary to file a claim in any event, it is only reasonable to call information and secure the correct phone number. There is no question the Claimant did have the proper address of the National Railroad Adjustment Board. Also, as noted above, the Claimant was represented by private counsel and, therefore, there was no excuse for this delay of well in excess of 2 months.


Upon complete review of the evidence, the Board finds that the time limits contained in Rule 35 have been violated; the Claim was not timely filed; and there are no mitigating circumstances that would allow the Board to proceed on the merits. Therefore, the Claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1987.