

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12888
Docket No. 12641
95-2-93-2-24

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen,
(A Division of TCIU
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(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM:

- "1. That the Atchison, Topeka & Santa Fe Railway Company violated the controlling Agreement, specifically Rules 19 and 110 when the Company denied Carman D.S. McCabe his contractual right to transfer to Kansas City (Argentine), Kansas under the provisions of Rule 19. That the Carrier failed to notify the Claimant of a Carman vacancy at Kansas City (Argentine), Kansas and employed two (2) new hires in January 1992; also, one (1) new hire and a B&B employee was transferred in and placed on the Carman's seniority roster in February, 1992.
2. That accordingly, the Atchison, Topeka & Santa Fe Railway Company be ordered to compensate Carman D.S. McCabe eight (8) hours per day, five (5) days per week, at the pro rata rate of pay for Carmen, retroactive to May 3, 1992 and to continue in like amount until August 31, 1992, at which time the Claimant accepted a position at Kansas City (Argentine) Kansas."

FINDINGS:

The Second 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 of hearing thereon.

On July 2, 1992, a claim was filed by Petitioner on behalf of Claimant, who was furloughed at the time, alleging that the Carrier had failed to recall him in January and February 1992, while hiring or transferring employes into available positions. Rule 39(a) provides:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the office of the Carrier authorized to receive same, within 60 days from the date of occurrence on which the claim or grievance is based...."

In its submission, Petitioner argues that Claimant could not grieve until he knew that his contractual rights had been violated and that it was not until late June that he learned about Carrier hiring more employes in Kansas City.

In Second Division Award 11962, this Board stated:

"The Rule, quite clearly, starts time limits from the date of the occurrence, not the date that the Organization or a Claimant may have acquired knowledge or discovered an incident which is perceived to be a Claim or grievance.

Of note is the comment from Second Division Award 3865 stating:

'Rules or statutes of limitations can be so written that the limitation period will start from discovery of facts rather than time of occurrence. But in adopting this rule the parties did not so provide, and we must observe the rule as adopted.'

In the Agreement under review here the Parties did not provide a rule which started time limits upon discovery. Instead they opted to use the time of occurrence. They are bound by the type of rule negotiated. Accordingly, the Claim must be dismissed without consideration of its merits, as it was filed late."

Sixty days provides a reasonable amount of time in which to become aware of Carrier's actions in such a case. At the same time, we do not find this to be a continuing grievance, which is covered under Rule 39(d) of the Agreement. In keeping with prior decisions of this Board, we must dismiss this case without addressing its merits.

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 Second Division

Dated at Chicago, Illinois, this 5th day of June 1995.