

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12982
Docket No. 12813
96-2-93-2-179

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

(Brotherhood Railway Carmen Division -
(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

"1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, specifically Rules 19 and 110(a) when the Company denied Carman Walter Wilmeth his contractual right to transfer to Carlsbad, New Mexico under the provisions of Rule 19 and granted the vacancy position at Carlsbad to S. A. Miner who is junior in seniority.

2. That, accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Carman Walter Wilmeth eight (8) hours per day, five (5) days per week, at the pro rata rate of pay for Carmen, retroactive to February 14, 1992 and to continue in like amount until November 2, 1992 when he was given a position at Carlsbad, New Mexico."

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 at hearing thereon.

In a threshold or procedural argument, the Carrier asserts that the claim is not properly before the Board because it was not submitted on the property in a timely manner. The Carrier contends that the claim was not presented "... within 60 days from the date of occurrence on which the claim or grievance is based ..." in keeping with the provisions of Rule 39(a).

The Carrier submits that the incident giving rise to the claim is based upon the transfer of another employee to a carman vacancy in Carlsbad, New Mexico, on January 24, 1991, and that the instant claim was not initiated on behalf of the Claimant until April 14, 1992, some 15 months later.

The Organization contends that neither it nor the Claimant was aware of the matter until shortly before the claim was filed on April 14, 1992, and that the claim was therefore filed in a timely manner, requesting compensation, retroactive 60 days, and continuing until the Claimant was given a position at Carlsbad, New Mexico, on November 2, 1992.

Study of the record shows that the Claimant, in a letter of April 10, 1992, to the Organization, after reviewing past correspondence concerning his furlough and the subsequent filing of a Rule 19 request for transfer to specified locations, stated:

"On February 27, 1992, I received a letter from Mr. L. L. Broxterman (copy enclosed) stating that I had been offered jobs in Belen, N.M. I was never offered those jobs nor were they part of my requested points of transfer.

Just recently I have learned that a man Junior to me in seniority was employed at Carlsbad, N.M. in January of 1991. . . ."

Contrary to the above contentions of the Claimant, the Carrier presented statements from local supervision in which it was stated that the Claimant had been made aware of various positions available in the region and that, as late as August 1991, that the Claimant had said that he was not interested in working at Belen or Carlsbad, New Mexico, because he was making good money killing prairie dogs for the State.

That the Carrier and the Organization, on behalf of the Claimant, reached an accord relative to the placement of the Claimant on another job at Carlsbad, and left the issue of pay for the disposition of this Board, is to the credit of the parties. However, that accommodation may not be viewed as dispositive of the case, for, as set forth in a September 21, 1992 Letter of Understanding, that action was taken "... without prejudice to the position of either party as to any rule, practice, or principle that may be involved . . ." as concerned the claim.

Based upon the above considerations and study of the record, the Board concludes that the claim must be dismissed account not having been filed in a timely manner.

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 2nd day of February 1996.