

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Staten Island Rapid Transit Operating Authority

Dispute: Claim of Employee:

1. That Electrician Helper Lawrence B. Kurschner be additionally compensated at the rate of pay between that of an Electrician Helper and that of an Electrician, plus overtime.
2. That such claim be allowed for each day that Lawrence B. Kurschner is denied the position of Temporary Electrician and continuing until such time as he is properly placed on the position of Temporary Electrician.
3. That, accordingly, Mr. Lawrence B. Kurschner be given a seniority date which would be consistent with the days he should have been permitted to work as a Temporary Electrician.

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 were given due notice of hearing thereon.

The facts in this dispute disclose that Electrician Helper Lawrence B. Kurschner entered service of Carrier on August 2, 1973 and was assigned on that date on the Electrician Helper's Seniority Roster. Subsequently, Carrier created two positions of Temporary Electrician. On July 15, 1974, Carrier promoted two employees junior to this Claimant to Temporary Electrician. Carrier did not promote Claimant, nor did Carrier offer Claimant the opportunity to accept such position. The Record discloses that on August 1, 1974, the General Chairman wrote a letter, addressed to Carrier's General Superintendent advising that Claimant had had his seniority disrupted; that his rights were

violated; and that he was unfairly and illegally discriminated against. On August 9, 1974, the Claimant filed a grievance with Carrier's Superintendent alleging that because Claimant was passed over, he was arbitrarily denied his promotion and was unjustly treated by Carrier. On August 27, 1974, the Assistant for Labor Relations to General Superintendent responded to the General Chairman denying any violation of the Agreement and rejecting the Claim. The Organization contends that the letter to the General Superintendent had nothing to do with the grievance filed with the Superintendent; that the letter dated August 1, 1974 was separate from the grievance filed with the Superintendent. The Organization further contends that since they had not received any reply from the Superintendent to date (November 13, 1974) and that the Carrier had lost its position in this dispute by default under the Time Limit Rule; and requested that the grievance of August 9, 1974 on behalf of Claimant be allowed in its entirety.

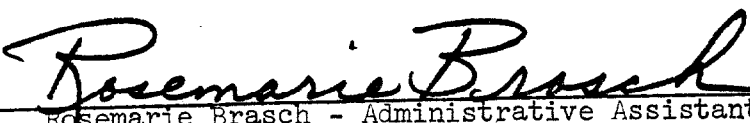
It is the opinion of this Board that the August 1, 1974 letter from the General Chairman addressed to the General Superintendent and the letter dated August 9, 1974 addressed to the Superintendent, were answered and claim was denied by Carrier on August 27, 1974 giving reasons for declination of this claim. Second Division Awards 4464, 5312 and Third Division Award 20790 reveals that the Time Limit Rule merely provides that "Carrier will decline the claim within sixty days." These awards, under the provisions of the Railway Labor Act permit Carrier to designate or delegate an officer to represent it at times when the designated officer or officers are not available for any reason. The Record further reveals that the instant Claim was denied by Carrier on August 27, 1974, following a conference which was held on August 12, 1974, giving reason for the declination of this Claim. Therefore, Carrier complied with the provisions of Rule 33. The Record further discloses that no appeal was taken from said declination of August 27, 1974 until the General Chairman wrote Carrier on November 13, 1974. Paragraph 1(b) of Rule 33 provides that if a Claim or grievance is disallowed it must be appealed in writing within sixty days from receipt of the notice of disallowance. Therefore, the Organization failed to make a timely appeal and the declination contained in the letter of August 27, 1974 from Carrier to General Chairman became final sixty days from August 27, 1974. Therefore, this Claim will be dismissed because of the untimely Appeal of this dispute. Rule 33 is jurisdictional and this Board has no authority to extend the provisions of a mandatory time limit rule. This Claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of March, 1977.