

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7984
Docket No. 7840
2-SCL-CM-'79

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

Parties to Dispute: { System Federation No. 42, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carman)
 { Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when they failed to transfer Carman Apprentice K. J. Fullenkamp from Lakeland, Florida to Waycross, Georgia on April 29, 1976.
2. That accordingly the Seaboard Coast Line Railroad Company be ordered to compensate K. J. Fullenkamp one hundred twenty nine and one-half (129 1/2) hours at the higher rate at each step of his apprenticeship, preceding the date of his scheduled raises, and in addition any other compensation and benefits he may have lost as a result of the violation. This is a continuing claim with the effective date of December 1, 1976.

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 employe 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.

Claimant Fullenkamp was furloughed and on September 30, 1975, he filed form 3100 seeking employment at other points on the System. Fullenkamp was employed by the Carrier as a Carman apprentice at Lakeland, Florida on February 26, 1974. Carrier employed E. J. Benson as a Carman apprentice at Mulberry, Florida on November 25, 1974. Both of these employees were furloughed during the year 1975. As stated above, each filed a form 3100 during the year 1975. Prior to Benson, who was junior to the claimant, commencing work at Waycross, Georgia on April 27, 1976, the form 3100 completed by the claimant was misplaced. The claimant upon inquiring about his status was notified that the job was available and he was assigned to work at Waycross, Georgia on May 19, 1976. At this time Benson had worked 129 1/2 hours.

On May 31, 1976, the Organization filed a claim for 129 1/2 hours at the pro rata rate claiming that the claimant had not been placed in service in accordance with Rule 23 (f). The Organization requested that he be given credit for 129 1/2 hours to be applied to his apprenticeship and an apprenticeship seniority date at Waycross, Georgia as of April 27, 1976. The claim was appealed to this Board and sustained in Award No. 7598 during the course of the appeal of the instant claim to this Board. The instant claim was filed by the Organization on January 29, 1977.

Pursuant to the Award, the claimant was compensated for 129 1/2 hours and his date as Carman apprentice was changed from May 19, 1975 to April 27, 1976. The claimant completed his apprenticeship, in fact, on November 21, 1978. In accordance with Award No. 7598, his seniority date was adjusted to October 30, 1978. He was upgraded to Mechanic on November 11, 1978 and thereafter his compensation was in excess of that of an apprentice.

In view of the above circumstances, and in view of the fact that the instant claim was not filed until January 29, 1977, more than six months after the claimant began working at Waycross, the Board is of the view that under these circumstances there are elements of mootness and untimeliness in the claim filed by the Organization. For those reasons the claim will be denied. It is noted that Rule 30 provides, so far as pertinent, as follows:

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

Under these circumstances here presented, the continuing claim doctrine is not regarded by the Board as applicable.

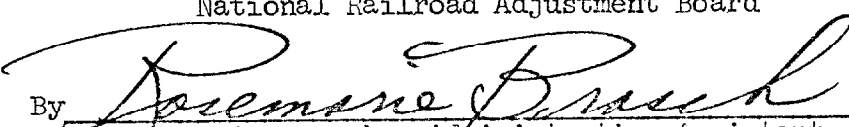
A W A R D

Claim denied.

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 20th day of June, 1979.