

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

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated the terms of the controlling agreement, specifically Rule 27(a), when Shop Superintendent A. Jacobsen did not make reply to General Chairman Burrill's claim, dated January 18, 1978, until April 14, 1978, which is 86 days after date said Claim was filed.
2. That under the terms of the controlling Agreement, the Burlington Northern Inc. denied Mr. Jerry Claar, laborer, Livingston, Montana, the contractual right to exercise seniority to position of Machinist Helper from December 13, 1978, which position was bulletined and established while he was on a bonafide leave of absence.
3. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Mr. Jerry Claar the difference in applicable helpers' rate of pay during the aforementioned period, and also a sum of \$3.00 per working day, account not transferred to aforesaid position within 10 days; from January 1, 1978 through September 13, 1978.

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.

The Claimant, Mr. Claar, was employed as a laborer at the Carrier's Livingston, Montana shop. From November 14, 1977 to December 21, 1977, he was on a medical leave of absence. During that period of time the Carrier advertised a vacancy in a Machinist Helper's position. In accordance with the contract, since there were no helpers available for immediate use, it was assigned to the senior qualified laborer who bid the job. Upon his return to active service, Claimant requested that he be allowed to displace the party assigned the vacancy since he was senior to him. In so doing, he relied upon Rule 15(e) of the agreement which reads in pertinent part:

"Employees on leave of absence as provided for in this rule, upon returning to service, will be permitted to return to their former positions or may exercise their seniority in bidding on new jobs or vacancies created during their absence."

Eventual denial of the claim as outlined in the submission gave rise to the problems here under consideration.

The organization points out that the Carrier violated Rule 27(a) of the agreement which reads in pertinent part:

"...Should any such claim or grievance be disallowed, the carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented."

The foregoing language is simple and explicit. It is not within the authority of this Board to modify the terms of the agreement. Numerous awards of the Board have upheld the validity of such time limits. In the case under consideration, the Carrier clearly exceeded the sixty-day time limit and, accordingly, we must hold that the claim should be allowed as presented without any reference to the merits.

The Carrier violated Rule 27(a).

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of February, 1980.