

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

Parties to Dispute: (James C. Baker
(
(Boston and Maine Corporation

Dispute: Claim of Employees:

Whether a carman, who relies on official notification as to the date of his attainment of carman status, when subsequently taking time off and after taking the time off, is notified that the first date was in error as being too early in time, can have the time he took off deducted from the accumulated days needed to attain carman status, and thereby lose seniority rights he would have had if the first notification date had not been in error.

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 employees involved in this dispute are respectively carrier and employees 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.

On December 22, 1982, the Claimant was notified that his Carman seniority date was corrected from a date of August 3, 1982 to September 18, 1982. In his Submission, Claimant acknowledges submitting his grievance or Claim on January 10, 1983, to the local for the Brotherhood Railway Carmen of the United States and Canada protesting his new seniority date. It was not until May 16, 1983, that a Claim pertaining to the new seniority date was filed by Claimant's private counsel with the Carrier's General Foreman.

Rule 29 of the Collective Bargaining Agreement, provides in pertinent part as follows:

"GRIEVANCES

(a) Should any employee believe he has been unjustly dealt with or the provisions of this Agreement have been violated, he shall have the right to take the matter up with his foreman through his duly accredited representative, as herein provided.

(b) 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 sixty days from the date of the occurrence on which the claim or grievance is based."

Rather than follow the grievance process on the property by filing a timely Claim with the Local Supervisor, the Claimant elected to pursue an intra-union appeal process. In so doing, Claimant did not comply with the Time Limit Rule of the applicable Agreement pertaining to Claims or grievances, and also failed to comply with 45 U.S.C. §153 First (i), which states:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1983, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."
(Emphasis supplied).

See also, N.R.A.B. Circular No. 1 (Issued October 10, 1934).

A W A R D

Claim dismissed.

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Award No. 10937
Docket No. 10612-I
2-B&M-I-CM-'86

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1986.