

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11474  
Docket No. 11311-T  
88-2-86-2-125

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada  
PARTIES TO DISPUTE: (  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk & Western Railway Company violated Rule No. 28 of the current controlling Agreement when on July 9, 1984 and August 6, 1984 Carrier filled Carman Apprentice vacancies at Roanoke East End Shops with furloughed Machinists when furloughed Apprentice Carmen were available.

2. That because of such violation, the Norfolk & Western Railway Company be ordered to compensate E. M. Kline, J. D. Cobb and P. C. Wright the daily rate of pay at eight hours per day at the pro rata rate for each day the three Machinists has worked until this matter is resolved.

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 employes 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.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute, and filed a Submission with the Division.

Claimants all are employed as apprentice carmen by the Carrier at its Williamson, West Virginia, facility. At the time of the events underlying this claim, all three Claimants were on furlough. On July 9 and August 6, 1984, Carrier employed furloughed machinists to fill two apprentice painter vacancies and one apprentice patternmaker vacancy at its Roanoke, Virginia, shop. The Organization thereafter filed a claim on Claimants' behalf, challenging Carrier's use of machinists to fill these vacancies.

This Board has reviewed the record in this case, and we find that the claim was not filed in time and therefore must be dismissed.

The Organization is alleging that Carrier engaged in wrongdoing on July 9 and August 6, 1984. However, a claim was not initiated in connection with this matter until April 16, 1985. The Agreement provides that a claim must be filed within sixty days of the date of the occurrence on which the claim is based. The claim in this case was not filed until nine months had passed.


Although the Organization claims that this is a continuing claim and therefore the grievance was filed in a timely fashion, this Board disagrees. The violation involves a specific articulated act which occurred on a clearly designated or ascertainable date. As we have stated in the past, that does not constitute a continuous claim. (See Awards 7571, 7581, and 16161.)

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1988.