

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company dealt unfairly with Wayland Shelton, a furloughed Sheet Metal Worker who was seeking employment at North Platte, Nebraska, North Little Rock, Arkansas, and Fort Worth, Texas.

2. That accordingly the Union Pacific Railroad compensate Wayland Shelton all wages due plus overtime received and all other benefits due by agreement received by junior employee, T. B. Rossmiller.

3. That the Union Pacific Railroad should be ordered to put Wayland Shelton senior to T. B. Rossmiller on the Sheet Metal Workers' Roster in North Platte, Nebraska.

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.

Carrier has raised a threshold issue challenging our consideration of this matter on its merits. It contends that the Claim before this Board was not filed timely, in that the date of occurrence on which it is based was July 31, 1987, and the Claim was not initiated until February 24, 1988. In response, the Organization contends that Claimant was unaware of the matter until shortly before he filed the Claim, thus it should be considered as filed timely.

The time limit Rule of the Agreement, under review here, provides:

"All claims or grievances must be presented in writing on behalf of the employe 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."

The Rule, quite clearly, starts time limits from the date of the occurrence, not the date that the Organization or a Claimant may have acquired knowledge or discovered an incident which is perceived to be a Claim or grievance.

Of note is the comment from Second Division Award 3865 stating:

"Rules or statutes of limitations can be so written that the limitation period will start from discovery of facts rather than time of occurrence. But in adopting this rule the parties did not so provide, and we must observe the rule as adopted."


In the Agreement under review here the Parties did not provide a rule which started time limits upon discovery. Instead they opted to use the time of occurrence. They are bound by the type of rule negotiated. Accordingly, the Claim must be dismissed without consideration of its merits, as it was filed late.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Meyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.