

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13298

Docket No. 13259

98-2-97-2-26

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Sheet Metal Workers' International Association

PARTIES TO DISPUTE: (

Consolidated Rail Corporation

STATEMENT OF CLAIM:

- “1. The Carrier violated the provisions of the current and controlling agreement, in particular Rule 3-D-1 (a), 3-D-1 (c), 3-E-1, when it did not allow Sheet Metal Worker T.J. Kapanowski to exercise his seniority from June 22, 1995 to February 13, 1996, resulting in the Claimant losing straight time wages, overtime wages, holidays, vacation time and health and welfare benefits.**
- 2. That accordingly, the Carrier be required to make the Claimant whole for all compensation for all time lost and that he be made whole for all benefits, such as, but not limited to vacations, holidays, seniority, medical and dental benefits and any other fringe benefit he may have been deprived of due to the Carrier not allowing the Claimant to exercise his seniority on June 22, 1995.**
- 3. That the Carrier violated the provisions of the current and controlling Agreement, in particular Rule 4-O-1, when the Carrier did not notify, in writing, within the sixty (60) day time limit, the representative who filed the claim.”**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant commenced service with the Carrier on March 19, 1971. Subsequently, he established seniority as a Foreman represented by an Organization other than the one representing Claimant in this instance. Claimant worked as a Foreman until June 14, 1995, when he was displaced. He was unable to hold any other Foreman position and reverted to the ranks intent upon displacing a junior craftsman, but was denied as he was not, according to the Carrier, on the same roster as the employee he desired to displace.

Finally, the roster problem got straightened out, and on February 5, 1996, Claimant was advised he had five days to exercise his seniority which he did.

On March 6, 1996, a claim was filed on behalf of Claimant, seeking wages lost from June 22, 1995 to February 13, 1996.

The Carrier responded and did advise the Organization that the claim was not filed within 60 days of the date of occurrence upon which it was based and was, as provided in Rule 4-O-1 (a), procedurally flawed.

The claim was appealed to the Labor Relations Officer designated to handle claims at the highest level. In that appeal, the Organization contested Carrier's position that the claim was invalid arguing that:

"... The Carrier allowed the Claimant to place himself on the roster on February 6, 1996. The claim was written on March 6, 1996, well within the 60 day limit. . ."

There is a flurry of letters at the final claim handling level triggered by the Organization's contention that its appeal was not timely denied with Carrier setting

forth the procedures it had implemented several months prior to the appeal, and indicating the Organization never complied.

After the Board's thorough review of the matter, it finds it unnecessary to delve into the matters concerning when the rosters were protested or how the claim was allegedly mishandled at the highest level. If the claim now before this Board was not timely presented in the first instance, it is void ab initio. Subsequent handling, other than the Railway Labor Act's mandated conference, is immaterial. In other words, Rule 4, the Time Limit on Claims Rule, is no longer applicable.

Before the Board, the Organization, to overcome Carrier's argument of a claim not timely filed, abandoned its defense raised on the property and in lieu referred to a Division Engineer's letter of June 26, 1995, that was written to Claimant while the roster problem was being investigated. That letter, dated June 26, 1995, written to Claimant, is as follows:

"I have researched what you discussed with me concerning the dispute about Union Rosters, and the displacement you wish to make. Although I do not, at this time have a final answer, I recognize your need to extend any 'bumping' time necessary while we try to determine your affiliation with the Sheet Metal Workers International Association.

This letter will serve as your protection during this time of determining exactly which rosters you should be listed on. Your time frame is extended accordingly."

The Organization's argument that the above-quoted letter extended to Claimant an indefinite period of time to file a claim has been raised too late. That argument should have been raised in the on-property handling so that it could have been addressed by the Carrier.

Secondly, the Board is not persuaded that said letter protected Claimant's right to file a claim, whenever.

Under the circumstances evident in this file, Claimant attempted to exercise his seniority on June 22, 1995. The claim was not filed until March 6, 1996. It was not timely filed as provided for in Rule 4-O-1.

Form 1
Page 4

Award No. 13298
Docket No. 13259
98-2-97-2-26

The claim has not been handled in the usual manner. The merits cannot now be considered.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 15th day of June 1998.