

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13541

Docket No. 13427

00-2-99-2-38

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

**(International Association of Machinists and
(Aerospace Workers**
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway Company
((former Atchison, Topeka and Santa Fe Railway Co.)

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the “Carrier”) violated Rule 111 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and improperly paid newly hired Machinist Raphael E. King at a reduced rate of pay.

Accordingly, we request that for this violation, he be compensated the difference in pay he was improperly denied and that he be correctly placed on the Machinist seniority roster at Amarillo, Texas with seniority date of October 17, 1997.

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.

On October 14, 1997, the Carrier wrote the Claimant a note, advising in the first paragraph thereof that he:

“... will be set up from your present Laborer Position to a Non-Seniority Position effective 0700 hours on October 17, 1997. . . .”

It is noted by the Board that the Local Chairman received a copy of the October 14, 1997, letter. It is therefore evident that the Organization and the Claimant both were aware that he was set up to work a non-seniority Machinist position.

On March 19, 1998, the Local Chairman (the same Local Chairman who received a copy of the Carrier's October 14, 1997-letter), filed a claim in behalf of the Claimant contending he should be afforded an October 17, 1997, seniority date as a Machinist, and that he should be paid the difference between what is being paid and the full Machinist rate.

The Carrier responded stating the claim was not timely filed and that the Claimant was not hired as a Machinist as his resume contained only a reference to some body shop work he did before being employed by the Carrier.

The Organization, in the on-property handling, did not challenge the Carrier's contention of an untimely filed claim, thus any arguments advanced by the Organization to offset the untimeliness argument of the Carrier subsequent to the date the claim was advanced to the Board cannot be considered.

Furthermore, the Organization was well aware of the Claimant's status as the Local Chairman was a recipient of the October 14, 1997, letter the Carrier sent to the Claimant. The time to file a claim was 60 days from the date the Claimant commenced working on the Non-Seniority Position (October 17, 1997). The claim of March 18, 1998, is too late. The Carrier's defense of an untimely claim is consistent with the Time Limit Rule in effect on the property.

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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 25th day of September, 2000.