

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21347

Docket Number MS-21594

William G. Caples, Referee

PARTIES TO DISPUTE:

(Jeff Waddington

(Burlington Northern Inc.

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on February 26th, 1976 covering an unadjusted dispute between me and the Burlington Northern Railroad involving the question:

I was laid off of my job with the Burlington Northern Railroad in the summer of 1973. I was a member of the Brotherhood of Maintenance of Way Employees, and was informed that according to Rule #9 of the union agreement I was to be given seniority in hiring should new crew members be needed. I was informed on August 9, 1973 that a new crew was being hired and so I reported for work. Upon arriving at the location of the new crew I discovered that new workers had been hired a full month before, and that therefore my rights as a union member had been violated. I therefore filed a claim for one month's wages with the Brotherhood of Maintenance of Way Employees. After much correspondence, it has come to light that my claim was rejected because it was not filed within sixty days of the first day that new crew members were hired despite the seniority that was my right. I argue that my claim was filed on time because the violation on which it is based continued over a period of one month (the month during which I was not working though I should have been according to rule #9 of my union agreement) and my claim was filed within sixty days of the last day of the month. Therefore the central question involved in this claim is whether or not my claim was based on a "continuing violation" on the part of the railroad. I contend that it is, though the union claims that it is not.

OPINION OF BOARD: The record discloses that Petitioner Waddington did not comply with terms of the Time Limit Rule, Rule 42(c) of the Agreement between the Parties, in filing his claim with this Board. Accordingly, the claim is barred and we cannot reach the merits.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1976.

