

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23149
Docket number lx.42788

Richard R. Kasher, Referee

**(Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees**

PARTIES TO DISPUTE:

**I
(Norfolk and Western Railway Company**

**STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8688) that:**

1. Carrier violated the Agreement between the parties when on or about April 1, 1977, it caused, required or permitted work belonging to the agency at Cloverdale, Virginia to be transferred across seniority districts to the Roanoke, Virginia Agent under the jurisdiction of Seniority District No. 45.

2. As a result of the foregoing violation Carrier shall now be required to compensate Agent M. A. Patterson for each day commencing April 1, 1977, eight (8) hours at the Cloverdale, Virginia rate of pay. In the absence of Agent Patterson Carrier shall be required to compensate the employee relieving him or should Agent Patterson leave Cloverdale compensate his successor. This claim is to be continuous.

3. Carrier violated the Agreement between the parties when on or about April 18, 1977, it caused, required or permitted work belonging to Agency at Buchanan, Virginia to be transferred across seniority districts to the Roanoke, Virginia Agent under the jurisdiction of Seniority District No. 45.

4. As a result of the foregoing violation Carrier shall now be required to compensate Agent C. E. Ballard for eight (8) hours each day commencing April 18, 1977. In the absence of Agent Ballard Carrier shall compensate the employee relieving him or should Agent Ballard leave Buchanan compensate his successor. This claim to be continuous.

OPINION OF BOARD: The Organization alleged that the Carrier violated the parties' Agreement by causing, requiring or permitting work to be transferred across seniority districts on April 1, 1977 and April 18, 1977. Claims were presented by the Organization to the Carrier on October 28, 1977 and November 16, 1977.

Rule 38(a)- TIME LIMIT ON CLAIMS - reads in pertinent part as follows:

"(a) All claims or grievances **must** be presented **in writing by or on behalf** of the **employee** 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."

Under Rule 38(a), a claim presented **approximately seven (7) months from** the date of the occurrence **on which it is based is untimely**. Therefore, the **instant claims are out of time and must be dismissed**.

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 the **Agreement** was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.

