

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24185  
Docket Number TD-24423

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association  
                              { Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") violated the currently effective Agreement **between** the parties, Rule 1 - SCOPE, Rule 2(b) and Rule 2(f) thereof in particular, when it permitted and/or **required** a person not covered by the schedule Agreement to perform train dispatcher work falling **within such** Agreement on August 24, 1980.

(b) Because of such violation the Carrier shall now compensate Claimant J. P. **Schillace** as senior qualified and rested train dispatcher at such time, one days' pay at the pro rata rate applicable to trick train dispatchers for August 24, 1980.

OPINION OF BOARD:    **The** Organization **claims** that **Carrier** violated the Agreement when the **yardmaster** at Clinton, Iowa, on August 24, 1980, instructed certain trains to operate in **an eastwardly direction** on the Westward track from **Mill Creek** to East Clinton, Iowa. The Organization asserts that such **train** movement can only properly be authorized by a train dispatcher.

As a result of these orders, the Organization filed a **pay** claim, asserting that the orders violated Rule 2 of the **Agreement. That** rule states, in relevant part:

"RULE 2

(b) **DEFINITION OF TRICK TRAIN DISPATCHERS POSITIONS**

This class includes positions in which the duties of incumbents are to be **primarily** responsible for the movement of trains by train orders, **or** otherwise; to **supervise** forces **employed** in handling train orders; **to** keep necessary records incident thereto; and to **perform** related work.

(f) **WORK PRESERVATION**

The duties of the classes defined in sections (a) and (b) of this Rule 2 may not be performed by persons who are not subject to the rules of this agreement."

The Organization asserts that it initially **filed** a claim on August 24, 1980. On October 24, 1980, it wrote Carrier indicating that no response had been received to the original claim. Again, on November 24, 1980, during an **appeal**, the Organization wrote Carrier stating **that** it had received no reply from **Carrier** to either of these letters.

**Carrier** answered the **Organization** on January 8, 1981. At that time, **Carrier** indicated that it had no record of receipt of the claim until November 24, 1980. **Carrier** took the position that the claim was time barred as it was not received by the Illinois Division until more than 60 days following the date of the claim.

**The Organization argues that** Rule 2(f) clearly preserves the work in question to train dispatchers. Therefore, **it** insists that the Agreement was violated.

We **conclude** that the claim must be dismissed as time barred under Rule 20. Therefore, we have no jurisdiction to address the underlying merits of the dispute.

While the Local **Chairman** stated that he sent the **claim** to Division Manager, R. L. Johnson, on August 24, 1980, the record evidence is clear that Johnson never received the claim.

No evidence was introduced to support the Organization's burden of establishing that the claim was presented in a timely fashion. No **timeslip** was submitted etc.

In fact, the only evidence is a letter dated October 24, 1980, from the Local **Chairman** which exceeds the time limits. In the absence of **any** evidence to refute **Carrier's** insistence that the **claim** was never received, and therefore not **timely** presented, we have no choice but to conclude that the **claim** is barred. See Award 11505.

**FINDINGS:** The **Third Division** of the **Adjustment Board**, after **giving** the parties to this dispute due notice of **hearing thereon**, and upon the whole record and all the **evidence, finds and holds:**

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 **claim** is **barred**.

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Claim dismissed\*

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.