

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24649
Docket Number MS-2470.

Robert W. McAllister, Referee

(James H. Carmine, III

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation (Amtrak) has failed to honor its Agreement with the Brotherhood of Maintenance of Way Employees in that the National Railroad Passenger Corporation (Amtrak) has failed to recall furloughed employees in order of seniority as required by Rule 20 of its agreement with the Brotherhood of Maintenance of Way Employees.

2. The National Railroad Passenger Corporation (Amtrak) has disregarded the seniority provision of its Agreement with the Brotherhood of Maintenance of Way **Employees** in that it has promoted junior employees in preference over senior employees.

3. The Brotherhood of Maintenance of Way **Employees** has failed to adequately represent Petitioner James H. Carmine III in pursuing his disputes, as stated **above**, against the National Railroad Passenger Corporation (Amtrak).

OPINION OF BOARD: The Claimant, James H. Carmine, **III**, entered the Carrier's service as a **Trackman** on June 11, 1979. He was working as a **trackman** in the Carrier's Northeast Corridor Southern District when his position in Gang A792 was abolished effective December 31, 1980. The record indicates the Claimant thereafter exercised seniority in various **trackman** positions. On January 22, 1981, the Claimant filed a furlough form. On June 5, 1981, the Claimant submitted a time claim against all time made by employee Michael Trosino from the time of Claimant's furlough (January 22, 1981) to the date of the claim.

The Carrier denied the claim on the basis it was not within the sixty (60) day time limit required by the collective bargaining agreement; that the claim did not specifically cite what work was supposedly involved; that the claimant lacked seniority as a **General Foreman**, which seniority was required to fill the position in question.

With respect to the requirements of Rule 64, the Board finds the record clearly shows the Carrier's denial is dated July 15, 1981. Rule 64 states, in part:

"(c) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of **disallowance**..."

The record further establishes the Claimant chose not to utilize the avenue of appeal as required by Rule 64. Therefore, this Board, in accordance with the specific provisions of Rule 64, must consider the matter closed. The failure to progress the claim on the Carrier's property is **procedurally defective** and mandates dismissal of this claim.

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 **Employee** 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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Leves - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1984

