

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25122  
Docket Number NW-25108

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(**Escanaba** and Lake Superior Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the **Agreement** when it failed to recall furloughed **Trackman B.** Anderson on and subsequent to May 18, 1981 (**System File ELS-2106**).

(2) The claim as presented by Assistant General Chairman F.M. Larson on July 3, 1981 to Director Field Operations W. F. Drusch shall be allowed as presented because said claim was not disallowed by Director Field Operations W. F. Drusch in accordance with Rule 52(a).

(3) As a consequence of either or both (1) and/or (2) above, the claimant

'be allowed pay<sup>for</sup> for all time worked by junior employe Allen Ashley, claim to continue until Mr. Anderson is allowed to return to service or until said position is placed on bulletin and awarded to the senior qualified applicant as provided by Rule 52(d), of the January 1, 1975 Agreement..

OPINION OF BOARD: On or about May 18, 1981 Carrier hired A. Ashley to fill a vacant **Trackman's** position on the section crew headquartered at Ontonagon, Michigan. At that time, Claimant, **B. Anderson**, held seniority as a **Trackman** and was available to perform the job filled by A. Ashley.

As a **result** of Carrier's **action**, the Organization filed this claim. In it, the Organization contended that Carrier violated Rule 13 of the Agreement when it failed to award the position at issue to Claimant, **since** he was senior to the employe hired to fill that **post**. Subsequent to the Organization's submission, the matter was docketed for appeal to this Board.

Time limits for filing ex parte submissions were extended to July 13, 1983. **However**, while the Organization's submission was timely received, Carrier's was not. It was received on July 19, 1983 and postmarked July 15, 1983. In addition, a request for an extension to file the **ex** parte submission was received on July 19, 1983 and postmarked July 18, 1983. It is clear, then, that neither Carrier's **ex** parte submission nor its request for an extension to file same was timely received by this **Board**. Under these circumstances, we have no choice but to sustain the claim and to remind the parties that the Railway Labor Act requires strict adherence to the time limits set forth therein.

**However**, we do note that Carrier's rebuttal, which was timely filed, specifies that the junior **employee** worked until June 5, 1981. Thus, the claim will be allowed as presented except that a review of Carrier's records will **determine** any cut off date. Accordingly, the claim is sustained to this extent.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

Attest:   
Nancy J. **Dever** - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.