

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charlotte Gold, Referee

Award Number 25874
Docket Number MS-25910

(Angelo Tennerelli
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"(1) Violation of Agreement Rule 26-Claims and Grievances by the Division Engineer. He failed to notify me within the agreed time limit of 60 days's on my Roster Protest. (See exhibits 1,2,3, and 4) Carrier also violated Rule 3-Section 3(A) (B) and Rule 40 (A)."

OPINION OF BOARD: On May 19, 1983, Claimant filed a written protest concerning the 1983 Plumber Roster and indicating that he was protesting his positions on both the Helper and Plumber ranks. Claimant maintains that Carrier failed to notify him within the 60-day time limit specified in Rule 26 of the parties' Agreement and that, consequently, he is entitled to be granted the positions cited in his roster protest, as well as granted the difference in the rate of pay and overtime and compensatory and punitive damages.

Carrier argues that the Claim handled on the property was a roster protest. Claimant has now enlarged the Claim before the Board. That Claim contains nothing more than vague and indefinite statements. Claimant has failed to provide any proof in support of his position.

Carrier further maintains that there is no record of Claimant having been awarded a position as a Plumber and therefore he has acquired no seniority as such. More important, the rosters (including that for Plumber Helpers) have reflected the same information for at least four years prior to 1983 and Claimant never challenged them then.

The Board has reviewed the entire record of the case, carefully considering the questions and arguments raised by both parties. We find that Rule 4, Section 6 (Seniority Rosters), ultimately is the governing factor in this dispute. That Rule reads as follows:

"RULE 4

Section 6, Seniority rosters

- (a) A roster, revised as of January 1 and to be posted March 1, showing the employee's seniority date in the appropriate seniority district will be posted within such seniority district at headquarters points where employees are required to report for work. Copies of all rosters will be furnished the General Chairman and the involved local representative(s).

- (b) Employees shall have 90 days from the date the roster is posted to file a protest, in writing, with the designated officer of the Company, with copy furnished the General Chairman and local representative. Employees off duty on leave of absence, furlough, sickness, disability, jury duty or suspension at the time the roster is posted, will have not less than 90 days from the date they return to duty to enter protest.
- (c) No change on seniority rosters will be made by the Company without conference and Agreements with the involved union representative. "

Claimant has a seniority date of October 25, 1976. At least four years prior to May 1983, he had an opportunity to see Roster lists for both Plumbers and Plumber Helpers. Under Rule 4, Section 6, (b) employees have 90 days from the date the roster is posted to file a protest. Numerous Third Division Awards have supported the proposition that protests must be filed in a timely manner. As Referee Wolf noted in Award No. 12297, a Board should not in good conscience upset a long established list where Claimant "sat supinely by, while the rights and obligations of the Carrier, Organization and employees listed on the roster crystallized."

In this instance, Claimant failed to file a protest when he first had, or should have had, knowledge of his standing on the rosters in question. Further, we find no evidence that Agreement was needed by Carrier and the involved Organization representative as to any change that should be made on the seniority rosters, as required by Section 6(c) of Rule 4.

Ultimately, we must conclude that Claimant's Claim is stale and totally lacking in any evidence to support his position. Mere assertions of a vague and insubstantial nature are not sufficient to meet Claimant's burden of proof.

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 Agreement was not violated.


A W A R D

Claim denied.

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By Order of Third Division

Attest: 
Nancy J. Deva - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.