

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Steven L. Hattery
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Rule 3, page 9; Rule 4, page 12; Rule 5, page 15; Rule 6, page 16; Rule 8, page 17; Rule 16, page 25; Rule 19, page 2. I feel that I should have rate of pay, all overtime and holidays for the almost four years I have lost. This grievance is filed under Rule 26 of the Agreement. I was recently laid-off on May 8, 1984."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On June 12, 1984, the Claimant filed a grievance alleging a continuing violation by the Carrier of various Rules from "...4/1/76 to present." The claim states that the Claimant was not permitted certain bidding rights after "...Conrail took over the Erie-Lackawana Railroad." The Claimant had established seniority on the latter in 1969. The relief requested is pay and benefits for "...almost four years'" work which the Claimant alleges he lost.

Prior to a ruling on whether the Claimant's seniority on the former Erie-Lackawana gave him bidding rights on the former Penn Central, before employees on the latter exhausted their own rights, the Board must decide on procedural objections raised by the Carrier in response to the claim. The original claim form was filed "...under Rule 26 of the Agreement." This Rule states, in pertinent part, that "...a claim or grievance must be presented, in writing, by an employee or on his behalf by his Union Representative to the Division Engineer or other designated official within sixty (60) days from the date of the occurrence on which the claim is based." The record shows that the Claimant was in procedural default of the Agreement when he filed a claim some eight years after the alleged violation was supposed to have started.

The Board further notes that its authority comes not only from Agreements which it is charged to interpret, but also from Section 153 First (1) of the Railway Labor Act. The Board must reemphasize here its position in these matters which has been set forth by Second Division Award 7453. That Award states, in pertinent part, the following:

"We cannot ignore these basic defects which render this claim defective. Nor can we treat them as 'mere technicalities' as urged by Claimant and go to the merits of the case to 'right a wrong' or to 'do basic justice as a matter of equity and good conscience.' We are not the Chancery Court, but rather a statutorily established Board of Adjustment. We take our mandate and our authority from the Act and from the Agreements which bind us just as they do the parties, which come before us. Where, as here, a claim is void ab initio, we simply have no jurisdiction to reach the merits, whatever we might think of the equities involved. In the face of a clear failure to comply with the time limits, we have no alternative but to dismiss the claim as barred from consideration. We do so without reaching or expressing any view on the merits."

The claim must be dismissed because the Board does not have jurisdiction over it (See Second Division Award 9059; Third Division Awards 6650, 6656, 7135 inter alia). Since this is so, the Board cannot rule on the merits of the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.