

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Delaware and Hudson Railway Company

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

(1) The Carrier violated the Agreement when it maintained B&B forces on the Pennsylvania and Champlain Divisions below the number shown on the 1977 B&B Mechanic's Seniority Roster (System Case #4-85).

(2) The Agreement was also violated when Assistant Director-Labor Relations J. T. Delano failed to disallow the claim (appealed to him under date of February 11, 1985) as contractually stipulated within Rules 35(e)2 and 35(e)4.

(3) As a consequence of either (1) and/or (2) above, the number of B&B employes on the Pennsylvania and Champlain Divisions shall be increased to the same number as shown on the 1977 B&B Mechanic's Seniority Roster."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

In the instant case the essential facts are undisputed. Carrier entered into an October 28, 1976 Agreement wherein it held that Bridge and Building gangs would be maintained at Carbondale and Plattsburgh unless reduced by negotiation. Some four years thereafter it abolished those gangs. It stands unrefuted that said abolishment occurred without negotiation.

The Organization filed an initial Claim dated August 30, 1984. It pursued the Claim on substantive grounds of the Agreement violation by the Carrier.

The Carrier, in its denial of the Claim relied upon Rule 35(e), paragraphs 1 and 2, wherein a claim of alleged violation must be made within sixty days of the occurrence on which the claim is based. It argued on the property that over three and one-half years had passed and Carbondale had been sold. However, the record indicates that the Carrier failed to timely respond to the Organization's February 11, 1985 letter of appeal. The Organization therefore advances its appeal to this Board on both procedural and substantive grounds.

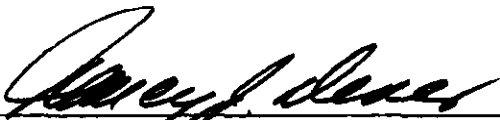
Irrespective of the Carrier's time limit violation, the Organization's Claim was initially invalid. It was a noncontinuous claim filed some four years after the abolishment and, as noted on the property, it was in violation of the time limits of the Agreement (Third Division Awards 26328, 23953; Public Law Board No. 2742, Award No. 1). The Claim did not mention claimants, nor request monetary compensation. It requested a declaratory judgment (Second Division Award 11135). This Board finds the Organization's Claim time barred at inception and, therefore, not properly before this Board. Given these facts, the Claim cannot be deemed proper by Carrier's untimely denial (Second Division Award 9321).

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.