

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 Employes  
(  
(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 failed to recall furloughed Trackman E. Thompson May 1 to May 9, 1984 (System File 28.84).

(2) Director Labor Relations Human Resources M. F. Melius failed to disallow the claim (appealed to him under date of November 14, 1984) as contractually stipulated within Rules 35(e)2 and 35(e)4.

(3) As a consequence of either or both (1) and/or (2) above, Claimant E. Thompson shall be allowed

'56 st. time hours and all overtime pay gained  
in his absence/to be assessed through junior employees pay records.'"

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.

This dispute arose when the Carrier began a recall of furloughed employees. Employees with less seniority than the Claimant were recalled to service prior to the Claimant. The Organization contends that this action violated the Agreement which provides that furloughed employees will be recalled in seniority order.

The Carrier argued that an attempt to recall the Claimant was made every day, but to no avail. Carrier denied that the Claimant was overlooked or that there was an improper recall.

The Board finds that in addition to the merits of the Claim, the Organization argues procedurally that the Carrier violated the time limits of the Agreement. Accordingly, we have carefully reviewed this issue. The probative evidence supports the Organization, which sent its appeal via certified mail on November 19, 1984. Carrier's response is dated February 25, 1985. This violates the sixty (60) day mandatory time limit of Rule 35. A conference does not extend the time limits. Carrier offers no evidence whatsoever to support its affirmative defense that other arrangements were made.


Having determined that a procedural violation occurred, we join a long line of Awards that have established that absent a mutually agreed extension, a violation of the time limit provisions of an Agreement mandates a sustaining Award. Without reaching the merits, part 3 of the Claim is sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.