

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company
(former St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it improperly filled the position of foreman (Gang 444) at the Rail Welding Plant at Springfield, Missouri by appointing Mr. D. R. Phillips instead of assigning Mr. R. L. Hires thereto (System File B-1322/EMWC 85-12-3A).

(2) Mr. T. L. Hires shall be appointed to fill the foreman's position referred to in Part (1) hereof and he shall be compensated for all wage loss suffered, effective sixty (60) days retroactively from October 2, 1985 and until the violation has been corrected.

(3) The position of assistant foreman (Gang 444) at the Rail Welding Plant at Springfield, Missouri shall be bulletined and filled in accordance with Rules 36 and 38 and the successful applicant shall be compensated retroactively sixty (60) days from October 2, 1985 and until such assignment is made."

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.

Claimant was assigned to Rail Welding Plant Gang #444 at Springfield, Missouri. Claimant held Foreman's seniority in the Track Sub-Department. On December 1, 1984, Mr. D. R. Phillips was appointed to a Foreman position and Claimant was appointed as Assistant Foreman. Carrier appointed the Foreman

and Assistant Foreman in accordance with its interpretation of the May 7, 1980 Agreement, wherein it is stated that Rule 40 of the August 1, 1975 Agreement will apply. On October 2, 1985, the Organization filed an initial Claim contending that Claimant should have been appointed Foreman instead of D. R. Phillips and that the Assistant Foreman position on Gang #444 should be put up for bid.

On November 27, 1985, Carrier responded to the October 2, 1985, Claim, indicating that the Claim was untimely filed (ten months after the incident took place) and that it was also defective on the merits. The Claim was progressed by the Organization through all the steps of the procedure and was finally placed before this Board. At each level of handling, Carrier reasserted its position that the Claim was untimely filed and was not meritorious.

This Board has reviewed the record and is compelled to dismiss this Claim as untimely filed. Rule 90 of the Schedule Agreement (Time Limit on Claims) applies in this instance. That Rule reads in pertinent part as follows:

"(1) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

The appointments in question were made on December 1, 1984. The Claim was filed on October 2, 1985, ten months later. This Board cannot justify from this record the delay in filing the instant Claim. The Claim is dismissed as untimely filed.

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 28th day of February 1990.