

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28409
Docket No. MS-28409
90-3-88-3-203

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Elmer A. Peterson
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of Elmer A. Peterson (BRAC/TCU) that:

1.The carrier is in violation of current Rule 1 (SCOPE) of the Agreement extant between parties when it permitted and/or instructed/directed Yardmasters (Company Officers on Union Pacific Railroad) to make/create Work Orders and other documents, records, reports and operation of Cathode Ray Tube (CRT's) dated May 16, 1981. Violation is of Rule 1 SCOPE and others (Copy of BRAC Rule 1 attached).

2.Mr. Elmer A. Peterson, General Clerk (Operation Control Clerk), shall be allowed a call for each day from date of first violation (December 2, 1985) til (sic) adjudicated, per Rule 39 (b).(Copy attached.)"

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.

The Organization filed a Claim on January 30, 1986, wherein it contended that Yardmasters performed work that properly belonged to the clerical craft. Specifically, the Claim charged that Carrier violated Rule 1 (Scope Rule) of the Controlling Agreement, when Carrier required or permitted Yardmasters to use the computer reporting terminal (CRT's) under the computerized system identified as the Terminal Information System (TIS). In effect, the information inputted by the Yardmaster entered the central computer and

created or changed the permanent computer reports necessary for train reporting and demurrage work reporting among other tasks. The Claim was denied by Carrier on March 17, 1986, and later appealed to Carrier's highest designated officer on May 13, 1986. The Claim was conferenced on November 13, 1986, and again rejected by Carrier. By letter dated March 3, 1987, Carrier confirmed the parties understanding that the time limits for further adjudication under Rule 46 would be extended ninety (90) days beginning February 19, 1987, with no monetary growth. Another letter dated February 25, 1988, and signed by the Director of Labor Relations/non ops confirmed the parties understanding that Carrier was agreeable to extending the time limits for further handling until March 23, 1988. In the interim period, Claimant personally apprised the aforesaid Carrier Officer by letter dated March 21, 1988, that he had appealed his Claim to the National Railroad Adjustment Board in Chicago, Illinois. In pertinent part, he stated:

"This was mailed to be within the appeal deadline of March 23, 1988 per letter of agreement between Mr. L.A. Lambert and Mr. L.D. Willey."

By letter dated May 17, 1988, the Executive Secretary of the National Railroad Adjustment Board informed Carrier's Vice President for Labor Relations and Personnel, that the Board received written notice dated May 1, 1988, from the Claimant, that he intended to file an Ex Parte Submission to the Third Division. There is no verifiable evidence that Claimant filed written notice with the appropriate Division of the National Railroad Adjustment Board prior to the March 23, 1988 deadline established by the parties. Accordingly, since said Claim was not filed with the Board within the agreed upon time period, the Board must dismiss the Claim for lack of jurisdiction.

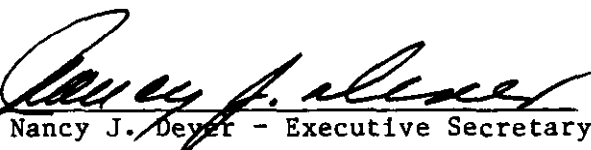
In effect, Claimant's failure to give timely notice of his intention to file an Ex Parte Submission was a breach of the parties appeals extension agreement and constituted failure to handle the Claim in the "usual manner" as set forth in Section 3, First (1) of the Railway Labor Act. For authority on this point see Third Division Awards 12718, 27502, 26948 and 22133, et al.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.