

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(former Seaboard System Railroad)

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

(1) The Carrier violated the Agreement when it improperly disqualified Machine Operator E. L. McMillian as operator of TRW-3 (tie remover) on June 28, 1988 [System File 37-SCL-88-43/12(88-1176) SSY].

(2) Division Manager T. M. Purvis failed to disallow the claim presented to him by General Chairman T. A. Denton on July 28, 1988 as contractually stipulated within Agreement Rule 40, Section 1(a).

(3) As a consequence of either or both Parts (1) and/or (2) above, the Claimant shall:

'...be immediately restored to the Class III machine operator position to which he was assigned by bulletin; that he be given a machine operator seniority listing, Rank 4, on the Atlanta-Waycross Seniority District Roster as of the date assigned by bulletin; and that he be compensated for all wage loss suffered as a result of the improper disqualification.'"

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.

A threshold issue to consider before proceeding to the merits of this matter is the contention of the Organization the Claim it filed with the Division Manager was not timely denied, thus, it is payable under the Time Limit Rule.

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92-3-90-3-7

The Board concurs with the contentions of the Organization. The Claim herein was filed with the officer of the Carrier designated by the Carrier to receive claims and grievances in the territory in which the Claim arose. It was not timely denied after being filed with that officer. Under the application of the Time Limit Rule the Claim must be allowed as presented.

The Claim will be sustained because of the time limit default. The Board makes no determination concerning the merits of the matter.

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 17th day of September 1992.