

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29752
Docket No. MW-29963
93-3-91-3-355

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Monongahela Railway Company

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

- (1) The Agreement was violated when the Carrier recalled junior employe J. Stuyvesant to perform machine operator duties on a tie gang on March 20, 1990 and continuing, rather than recalling claimant A. J. McGonigle, who was qualified, available and willing to perform such duties.
- (2) The claim as presented by District Chairman Ferris on March 27, 1990 to Division Engineer D. Painter, shall be allowed because said claim was not disallowed by Division Engineer D. Painter in accordance with Rule 4-L-1 (c).
- (3) As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant A. J. McGonigle shall be paid eight (8) hours per day listed and to be made whole."

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 employe 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.

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Parties to said dispute waived right of appearance at hearing thereon.

This claim arose when the Carrier recalled a junior employee to perform machine operator duties on March 20, 1990, rather than recalling the Claimant, who was not recalled to service until April 17, 1990. The Carrier failed to respond to the claim within the 60-day time limit specified in the Agreement, and, under well-established precedents of the Board, we conclude that the claim must be paid as presented.

During the handling of the claim on the property, the Carrier attempted to mitigate its damages by offering to pay the Claimant for the fourteen days actually worked by the junior employee during the claim period. While we would normally adopt this type of "make whole" remedy after concluding that the Agreement had been violated, as we conclude it was in this case, the Carrier's violation of the time limits requires that the claim be paid as presented. We therefore agree with the Organization's contention that the claim involves twenty-one working days, not the fourteen days actually worked by the junior employee, and direct that the Carrier compensate the Claimant accordingly.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.