

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31382
Docket No. MW-31810
96-3-94-3-97

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation
((Amtrak)

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

- (1) The claim * as presented by General Chairman J. Dodd on January 22, 1993 to Division Engineer J.E. Quirk shall be allowed as presented because said claim was not disallowed by Division Engineer J.E. Quirk in accordance with Rule 64(b) (System File NEC-BMWE-SD-3214 AMT)."

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 employee 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.

By letter dated January 22, 1993, the Organization requested that Carrier reimburse Claimant for two pairs of overalls that were burned while welding. It is the Organization's contention that its letter was not timely and properly responded to; that the Time Limit on Claims Rule obligates the Carrier to respond to whoever filed the claim and although the Organization does not deny a timely response was made by Carrier, it was a response directed to someone other than the person who filed the purported claim.

The Carrier argues that the Time Limit on Claims Rule becomes applicable only when a claim or grievance has been timely and properly filed and in this instance, the disputed letter is neither a claim, nor is it a grievance.

This Board's review of the purported claim and its contents leads to the conclusion that the Carrier's position is correct. The purported claim contained no reference to any Rule and/or Agreement provision alleged to have been violated. Without a Rule or an Agreement provision upon which to adjudicate a dispute, there is no claim or grievance that has been filed by the Organization which comes within the parameters of the Time Limit on Claims Rule.

The following except from Third Division Award 19766 says it all:

"Before the time limits of Article V become applicable, the claim as presented must come within the term 'claims or grievances' upon which Article V is premised. The claim requesting compensation for damage to claimant's automobile is in the nature of a tort and does not involve the working agreement between the parties.

The claim does not allege a rule violation nor does it involve the interpretation or application of the Schedule Agreement. The duly established grievance procedure on this property has thus been erroneously invoked by the Organization. The proper forum for adjudication of the within claim is a Court of Law and not the National Railroad Adjustment Board. Thus we are left no alternative other than to dismiss the claim."

AWARD

Claim dismissed.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.