

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31503
Docket No. MW-32072
96-3-94-3-452

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Soo Line Railroad Company

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

- (1) The Agreement was violated when the Carrier failed and refused to reimburse Machine Operator A. R. Speten for mileage expenses incurred as a result of his not being allowed to occupy the position of operator of Tractor/Mower ET122 assigned to him within Bulletin No. 57A (System File R724/8-00139).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. R. Speten shall be allowed six hundred sixteen dollars (\$616.00) for the mileage expenses incurred beginning May 3 through 28, 1993."

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.

Claimant was employed as a Machine Operator in the Carrier's Track Department. On April 22, 1993, Claimant was assigned as Machine Operator of Tractor/Mower ET122 effective May 3, 1993. However, the Carrier held the Claimant on the former position until such time as a replacement could be found.

Claimant submitted an expense account for the month of May claiming mileage from Bismarck to Underwood, Minnesota. Prior to May 3, 1993, the job at Underwood was not entitled to the provisions of Rule 36.

The Organization argues that relief employees were available and the Claimant should have been released to work on the new assignment.

The Carrier argues to the contrary as well as the fact that Claimant was not entitled to Rule 36 benefits prior to May 3, 1993.

The Carrier also argues that the claim was not timely filed within 60 days of the incident. Claimant filed an expense account for May which was rejected by the Carrier's Roadmaster on June 7, 1993. Claim was filed with the Division Manager in a letter dated August 5, 1993 which was received on August 13, 1993. However, the Division Manager took no exception as to the timeliness of the filing of the claim. Therefore, the Board will not consider the time limit argument.

The Organization has the burden to prove the Carrier violated the Agreement. Claimant was assigned to work at Underwood prior to bidding on a new assignment. Under the provisions of Rule 10(h) Claimant was held on that position until a qualified relief was found.

The Organization has argued that qualified relief was available. However, that question is not before this Board. The question before this Board is whether the Claimant is entitled to travel expenses. The Organization has failed to show how the holding of an employee or a position triggers the benefits of Rule 35 when such benefits were not available prior to the action of holding the employee.

The Organization has failed to meet its burden.

AWARD

Claim denied.

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 23rd day of May 1996.