

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32432  
Docket No. MS-31106  
98-3-93-3-114**

**The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.**

**(George L. Nelson**

**PARTIES TO DISPUTE: (**

**(Southern Pacific Transportation Company**

**( (Western Lines)**

**STATEMENT OF CLAIM:**

**"1. AFTER 6 YEARS OF ESTABLISHMENT OF CLASS OF (00A) TRACK SUPERVISOR CARRIER HAS ALLOWED MISAPPLICATION OF AGREEMENT PROVISION BY ALLOWING AN EMPLOYEE WHO HAD NOT ACTIVATED HIS TRACK SUPERVISOR SENIORITY IN LINE WITHSTANDING TRACK SUPERVISOR AGREEMENT PROVISIONS TO DISPLACE ESTABLISHED TRACK SUPERVISORS WITHOUT REGARD TO THE AGREEMENT.**

**2. AS REMEDY IT IS THEREFOR (SIC) REQUESTED THAT EFFECTED TRACK SUPERVISORS BE PLACED BACK TO THEIR POSITIONS HELD PRIOR TO JANUARY 16, 1992 AND COMPENSATED FOR ANY LOST WAGES FROM JANUARY 16, 1992 UNTIL SUBJECT MATTER IS RESOLVED. THIS IS TO INCLUDE ANY AND ALL OVERTIME THEY WOULD HAVE HAD IF THIS HAD NOT OCCURRED. ALL TIME WORKED AND ANY ILLEGAL DISPLACEMENT BY OTHERS NOT BE COUNTED AS PART OF THE 90 ACTUAL WORKING DAYS AS OUTLINED IN THE AGREEMENT INCLUDING R. W. SHOLL. IF THIS CANNOT BE DONE THEN ALL CLAIMANTS DEMAND THE ROSTER BE CORRECTED AND ALL PERSONS WHO WERE NOT INCUMBENTS NOR HAVE BID IN AND WORKED THE QUALIFYING 90 DAYS BE REMOVED FROM THE ROSTER."**

**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 were given due notice of hearing thereon.

This claim was originally filed on March 13, 1992 by Mr. George Nelson, District Chairman for the Brotherhood of Maintenance of Way Employees, on his own behalf and ostensibly for the benefit of 13 fellow employees. The claim was properly denied at the local level by D. Wickersham, District Engineer for the Carrier. Subsequently, Mr. Nelson appealed the claim, progressing it to the Carrier's highest designated officer, Ms. Joyner. At that time, Ms. Joyner notified Mr. Nelson that his claim had not been handled in accordance with the Railway Labor Act. In that correspondence, Ms. Joyner maintained the following:

**"It is a long standing practice and procedure between this Carrier and your Organization that subsequent to a denial from an official such as Mr. Wickersham, any further progression of a claim must come from the General Chairman of your Organization to the designated officer in this office of labor relations. No officer in this office will deal with any claim which bypasses the General Chairman of your Organization."**

After that notification, the Board informed Carrier that Mr. Nelson had listed this case with the Third Division.

Carrier maintains that this claim is procedurally defective and should therefore, be dismissed because it was not progressed in accordance with the Railway Labor Act. According to Carrier, the procedure for properly handling claims has existed for "several years." Although Claimant does have the right to represent himself in this

matter, Carrier contends that General Chairman Douglas is "the person" certified to handle claims on behalf of the employees at the highest level, not Claimant Nelson. Further, Carrier maintains that Claimant waited five years to protest Mr. Sholl's qualification as a Track Supervisor, "well beyond" the requisite sixty day time limit.

For his part, Claimant asserts that Ms. Joyner's failure to properly deny this claim represents a fatal procedural error. With regard to Carrier's contention that Mr. Nelson is not the proper representative for handling claims above the local level, Claimant points to the January 25, 1992 correspondence which Carrier received from Claimants Peralta and Diaz, in which they stated the following:

"This letter is written to request District Chairman George L. Nelson to proceed with our illegal bump case since our General Chairman Mr. Robert S. Douglas refused us any representation in the matter. This was in phone conversations with his office on numerous days following the bumping this month in the class of Track Supervisor. The Agreement Rule 44 indicates that we can do this. Our rights were violated by the Carrier and we ask this case to be forwarded to highest level of appeal including the Third Division appealing."

In sum, Carrier asserts that this claim is procedurally defective as a result of the "improper" way in which it was progressed. For his part, Mr. Nelson alleges that he did not handle the claim improperly, but rather progressed the claim at his fellow employees behest. Further, Claimant asserts that Carrier's failure to deny his claim in a timely manner is fatal to Carrier's case.

Regarding the merits of the dispute, as background, the Organization and Carrier signed an Agreement establishing the position of Track Supervisor on December 8, 1986. Under the terms of that Agreement, I/R Foreman constituted the initial cadre of Track Supervisors; with qualification/disqualification to be accomplished within 90 days of the effective date of the Agreement. Once qualified, a former I/R Foreman held the same seniority date as Track Supervisors that he had held as a Track Foreman. According to Carrier records, Mr. Sholl was qualified as Track Supervisor and was assigned that position, carrying a seniority date of November 26, 1984; whereas Claimant Nelson, who also qualified as a Track Supervisor, carried seniority date of August 20, 1985. On January 16, 1992, Track Supervisor Sholl served notice of intent to bump Track Supervisor Nelson. At that time, Mr. Nelson raised an objection that Mr. Sholl had not

been "properly" qualified as a Track Supervisor under the terms of the December 8, 1986 Agreement and should not have been allowed to bump him. When Carrier allowed the bump and the BMW General Chairman declined to intervene, the instant claim was filed by Mr. Nelson on March 13, 1992.

According to Carrier, Mr. Nelson's March 13, 1992 claim was untimely because he "waited five (5) years to protest Mr. Sholl being qualified as a Track Supervisor." That objection misses the point that there was no grievable occurrence for Claimant to protest until Mr. Sholl attempted to displace him in January 1992. On the other hand, at the threshold, Carrier also objected that Mr. Nelson had no standing to represent anyone other than himself as an individual in appealing the initial denial of his claim to the highest Carrier officer. That objection is well founded and Claimant's mishandling of that appeal proves fatal to his case.

To the extent that Division Chairman presented the appeal as class grievance on behalf of some fifteen class members, among whom he counted himself, it was not progressed to this Board in accordance with the requirements of the Railway Labor Act. Mr. Nelson would have had standing to file a claim with Carrier and represent himself as an individual in handling the claim. However careful examination of all of the record shows that Mr. Nelson was acting throughout in his capacity as "Division Chairman", the title with which he consistently signed all claim correspondence and documents filed by him in this matter. Nowhere in this record is it disputed that handling "in the usual manner", within the meaning of that quoted phrase from Section 3, First (i) of the Railway Labor Act, was for the BMW General Chairman to progress claims to the highest designated Carrier appeals officer. Moreover, it does not appear to be in dispute that Mr. Nelson and the named individuals he purported to represent were attempting to make an "end run" around their own duly elected General Chairman, who had reviewed their claims, found them wanting in merit and refused to progress them to the highest appeal level with Carrier. Given this state of the record, we hold that Carrier did not err when it declined the claim for failure to comply with the statutory requirements for handling "in the usual manner" and we dismiss the claim at this level for the same reason.

### **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 21st day of January 1998.**