

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35191
Docket No. MW-31059
00-3-92-3-903**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees
(Atchison, Topeka and Santa Fe Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it required Extra Gangs 51, 53, and 58 forces to suspend work on their regularly assigned positions on July 23, 1991 (System File 80-34-912/910110237).**
- (2) As a consequence of the violation referred to in Part (1) above, the twenty-four (24) Claimants listed below shall be compensated at their respective rates of pay for all wage loss suffered.**

R. G. Collier	Steve Trent
D. A. Johns	Lee Headrick
Jose Zamora	Clay Fatout
Paul S. Davis	K. R. Barton
R. D. Adams	C. W. Mize
Steve Wilhelm	John Effinger
Ronnie Harris	Terry L. Smith
Darryle Cells	Phillip A. Tennery
J. M. Chavez	John Brewer
Luther Bailey	I. E. Thompson
Roger Cromwell	Sergio Murillo
Michael G. Harrison	Frederick W. Manley”

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 case involves a claim by the Organization that the Carrier violated the Agreement when it sent the entire complement of Surface Correction Gang 51, Ballast Unloading Gang 53 and Undercutter Gang 58 home, and compensated them for only two hours, after it discovered that the undercutter behind which the Gangs were scheduled to work had been vandalized and was taken out of service for repairs. The Organization argues that the Carrier's actions abrogate the contractually mandated 40 Hour Work Week Rule. According to the Organization, Rule 34, which addresses circumstances under which employee hours may be reduced below eight per day, does not permit the Carrier to deprive employees of a day's work merely because of a machinery breakdown.

The Carrier, on the other hand, asserts that the Claimants were properly released from duty when it became known that there would be no work for the Gangs to perform that day. The Carrier maintains that the work to be performed by the Gangs was totally dependent upon the operation of the undercutter. Without the undercutter, the Gangs could not perform any of their assigned duties.

As a threshold issue, however, the Carrier asserts that the Board's consideration of this claim is barred because proceedings before the National Railroad Adjustment Board were not instituted by the Organization within nine months from the date of the decision by the Manager of Labor Relations denying the claim. According to the Carrier, the nine month time period began to run on February 28, 1992, when the Carrier's denial of the claim was discussed in conference.

The Carrier explains that previous to the February 28, 1992 conference, by letter dated November 1, 1991, the Manager of Labor Relations declined the instant claim, but agreed to suspend time limits for submitting the dispute to the Board pending discussion of the claim in conference. At the conference held in Schaumburg, Illinois, on February 28, 1992, the Manager of Labor Relations affirmed the denial stated in his November 1, 1991 letter. Thus, the Carrier argues, proceedings before the Board should have been

commenced on or before November 28, 1992, and the Organization's December 8, 1992 Notice of Intent is untimely.

After carefully reviewing the record evidence, we have determined that the Organization's claim must be rejected on the grounds it is barred. The language of Rule 14-(a)-(3) is clear:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board * * * It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

The facts pertaining to the timeliness of this claim are undisputed. The Carrier's highest designated officer, its Manager of Labor Relations, declined the claim by letter dated November 1, 1991. In the letter he agreed "to suspending the time limit on this case, pending discussion in conference." There is no dispute that the case was discussed in conference on February 28, 1992. On that date, the nine month period for advancing the dispute to the Board commenced. That period ended on November 28, 1992. Accordingly, under these unique and unusual facts, the Organization's December 8, 1992 Notice of Intent to the Board was untimely, and the claim is barred.

AWARD

Claim dismissed.

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 20th day of December, 2000.