

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35589  
Docket No. MW-32513  
01-3-95-3-411**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier omitted Mr. J. M. DeCock's name from the 1994 East Regional Production Gang Cook Seniority Roster and thereafter failed and refused to correct same (System Docket MW-3443).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. M. DeCock shall have his cook's seniority date of June 22, 1987 restored to its appropriate roster standing on the East Regional Production Gang Cook Seniority 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 involves a roster protest concerning the omission of the Claimant's name from the 1994 Eastern Regional Production Gang Cook Roster. The record reflects that the Claimant, a Track Foreman at the time of the instant claim, was awarded a Cook position in Inter-Regional Seniority District No. 1 effective June 22, 1987. That roster was posted on April 1, 1988 while the Claimant was on furlough; it did not include the Claimant's name. The Claimant was recalled to a Foreman position on a Surface Support Gang headquartered in Mt. Laurel, New Jersey, on April 10, 1998. No roster protest was filed prior to April 28, 1994.

The Organization contends that the Claimant was working in a location where he did not have access to the printed roster and was unaware that his name had been omitted. It also alleges the omission as a clerical error requiring correction.

The Carrier argues that the matter is time barred by the provisions of Rule 4, Section 6, requiring that roster protests be filed within 90 days from the date of posting or return to duty. It notes that the Claimant had 90 days from April 10, 1988 to protest his omission from the Cook roster, but waited six years to do so. It relies upon the following precedent between the parties as supporting the position that the Board has no jurisdiction to entertain the merits based upon the untimeliness of the claim: Third Division Awards 33477, 31134, 30776, 29116, 27314, 27313 and 25874.

A careful review of the record convinces the Board that the Carrier's position has merit. There is no evidence supporting the Organization's allegation that the omission from the 1994 roster was merely a clerical error, as no rosters between 1988 and 1993 were offered to show the Claimant's inclusion. Rule 4, Section 6 clearly sets forth a 90 day time period for filing roster protests from either the date of their posting, here April 1, 1988, or the date when the employee returns to work from leave or furlough, here April 10, 1988. There is no exception listed for employees working outside the area of the posting, and no dispute that it is an employee's responsibility to protect his "property." We adopt the rationale set forth in Third Division Awards 30776, 29116, 27314 and 27313, in finding that this protest is untimely and precludes our consideration of the merits of 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 24th day of July, 2001.**