

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35594
Docket No. MS-35180
01-3-99-3-19

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

(Richard Madosa

PARTIES TO DISPUTE: (

(Long Island Rail Road Company

STATEMENT OF CLAIM:

“This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file Ex Parte Submission within 75 days covering an unadjusted dispute between me and the Long Island Railroad involving claim RMSG#4:

On Saturday August 1, 1998 Gordon Maddox a technician and junior employee of gang 53, which I am also a member, was given first opportunity to work predetermined overtime.

Please note this is in violation of rule 41 regarding predetermined overtime and as senior man I should have been asked first.

I request the 15.5 hours of overtime given to Mr. Maddox also be awarded to me.

On September 14, 1998 a formal appeal of RMSG#4 [rule 50(a)] was addressed to the Assistant Chief Officer-Communications & Signal, Mail Code #3146 as directed in a September 9, 1998 letter from K.M. Lettow Assistant Chief Officer Communications & Signal, as the location where ‘all letters should be addressed to.’

Rather than forward my stated formal appeal to the Chief Engineer as steps in the usual manner of handling such disputes as outlined in rule 50(a), K.M. Lettow a management representative, interceded and chose instead to not only refuse to forward my formal appeal to the Chief Engineer but also to personally reject a stated formal appeal of my claim which was not his right

and is not a usual practice in handling disputes. The carrier thus violated the time limits of this claim as stated in Rule 50(a).

I again request the 15.5 hours of overtime as stated in my August 17, 1998 claim."

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.

The Claimant alleges that he was denied his right to an overtime assignment in violation of Rule 41 and that the Carrier ignored Rule 50 when it failed to forward his claim to the next succeeding Officer within the requisite time period. He seeks payment of 15.5 hours of overtime worked by the junior employee on August 1, 1998.

The Carrier initially contends that the Board has no jurisdiction to hear this dispute because the Claimant failed to properly progress the matter to the Board in accordance with Section 3, First (i) of the Railway Labor Act. It notes that Rule 51(b) sets forth the usual manner of handling disputes on the property, and indicates that the final appeal shall be to the highest official designated to handle such appeals, in this case, the Director of Labor Relations. The Carrier asserts that the Claimant never presented the claim to the Labor Relations Department, and that there was no conference on the property prior to referral of the matter to the Board, requiring dismissal, citing First Division Award 24199; Second Division Award 10421; Third Division Awards 29991 and 28772.

The Carrier argues that the claim has no merit because Rule 41, Pre-Determined Overtime, was not violated. It points to Appendix E of the Agreement, referenced in Rule 41, that reveals a mutual understanding between itself and the Organization concerning the

application of Rule 41, and distinguishes work of a routine nature and "project" work, defined as any on-going construction and maintenance undertaking. The Carrier contends that the Claimant did not participate in the Penta "project" work involved in the overtime in question, because he works a Radio Communications Technician job in the Babylon radio shop, and normally not outside the shop. The Carrier asserts that it assigned all employees in the gang who worked on the Penta project the Thursday and Friday prior to the overtime in question, which did not include the Claimant. It contends that its assignment was in compliance with Rule 41(b) permitting overtime to be assigned to the gang members working on the project prior to the overtime date.

After a careful review of the record, the Board is of the opinion that we have no jurisdiction to entertain the merits of this dispute and that this claim must be dismissed. Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the Board require claims to be handled in the usual manner on the property up to and including the Chief Operating Officer of the Carrier designated to handle such disputes, which in this case was the Director of Labor Relations. Because no claim was progressed by the Claimant to, and handled by, Labor Relations, and no conference was held on the property prior to submission to the Board, both prerequisites of our jurisdiction, the instant dispute has not been handled in the "usual manner," and we are therefore foreclosed from consideration of the claim on its merits. Third Division Awards 29991, 28896, 28772 and 28595.

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 24th day of July, 2001.