

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38843
Docket No. MS-38767
08-NRAB-00003-050176
(05-3-176)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(R. J. Cretella

PARTIES TO DISPUTE: (

(The Long Island Railroad Company

STATEMENT OF CLAIM:

“Long Island Railroad denies me Ralph Cretella the Senior qualified Foreman the right to be asked first to work overtime. The Long Island Railroad has a verbal agreement in effect which is covert and disparate. This verbal agreement isolates me from the overtime and allows junior Assistant Foreman under my jurisdiction overtime before me. Consequently, I have lost an enormous amount of money and the remedy sought is that I be paid for all overtime, Holiday and double time lost from September 7, 2003 up until a decision can be determined by the National Railroad Adjustment Board.”

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 displaced another Foreman on Gang 25 in September 1999. Approximately two months later, the Carrier made some administrative changes that resulted in the Claimant's gang number being changed from 25 to 24. The claim advanced by the Claimant alleges that this administrative change in November 1999 violated Rule 59 in that he was not given five working days notice of the abolishment of his Gang 25 position and Rule 16 because the Carrier failed to re-advertise his position when there was a material change in his job. Despite the allegation that these violations occurred in November 1999, the Claimant did not submit his written claim until October 16, 2003, nearly four years later.

Rule 50(a) of the applicable Agreement establishes the general requirement that all claims must be "... presented in writing ... within 60 days from the date of the occurrence on which the claim or grievance is based. ...". The Carrier objected to the jurisdiction of the Board to consider the merits of the claim because it was not timely presented in accordance with Rule 50(a). The Carrier raised this objection in its initial reply to the claim and maintained the objection through all subsequent handling of the claim. The Claimant, on the other hand, contends that the claim is a continuing claim and was properly presented in accordance with Rule 50(d). Rule 50(d) permits the filing of continuing claims at any time subject only to a 60-day limit on their retroactivity. Thus, the jurisdictional question is squarely before the Board.

The Claimant does not have a continuing claim within the meaning of Rule 50(d). Given the foregoing, we must find that the instant claim was not timely presented in accordance with Rule 50. As a result, we do not have jurisdiction to consider the claim on its merits. It must, therefore, be dismissed.

AWARD

Claim dismissed.

Form 1
Page 3

Award No. 38843
Docket No. MS-38767
08-NRAB-00003-050176
(05-3-176)

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 30th day of January 2008.