

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38844
Docket No. MS-38210
08-3-NRAB-00003-040121
(04-3-121)

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

PARTIES TO DISPUTE: (M. G. Mosso
(Metro-North Railroad

STATEMENT OF CLAIM:

"Michael Mosso ("Claimant") contends that the Carrier wrongly disqualified him from ATK Job #619 on March 18, 2003. Claimant requests the disqualification be removed from his personal file."

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.

Although the Claimant requested and was granted a Referee Hearing before the Board, he did not make a personal appearance at the scheduled time and place despite having been mailed two letters of notification.

The Claimant was issued a notice of disqualification on March 18, 2003 that contained the following two paragraphs:

“Effective immediately, in accordance with Transportation Communications International Union Rule 8(b), and after conference with your Union Representative, you are hereby immediately disqualified from Job 619. This disqualification is based on your inability to properly perform the duties involved in being a timekeeper.

Please exercise your seniority subject to contractual provisions. Although you are released immediately, you will be paid for the remainder of your tour to afford you the opportunity to exercise your seniority.”

The listing of copy recipients shows that the Claimant's Organization representative also received a copy of the notice.

No claim or grievance was filed by the Claimant pursuant to Rule 49, nor was an Unjust Treatment Hearing requested pursuant to Rule 52 to challenge the disqualification. Both of these Rules establish a 30-day filing time limit from the date of occurrence or cause of the complaint in which to take such action.

However, the Claimant requested that the notice of disqualification be removed from his personnel file by letter dated December 15, 2003. From the context of his letter, it appears that the Claimant had reviewed his file sometime in December 2003 and was reminded of the existence of the disqualification notice.

In its Submission, the Carrier objected to our consideration of the merits of the claim on the basis of the Claimant's failure to timely comply with the requirements of either Rule 49 or 52.

It is well settled that claims must be submitted in accordance with the applicable Agreement and handled thereafter in the usual and customary manner on the property. If such claims are not so submitted and handled, then we do not

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gain jurisdiction to consider them on their merits. Such is the case here. The record does not establish that the instant dispute was properly submitted and handled in accordance with the applicable procedural requirements. Therefore, we do not have jurisdiction to review it. As a result, we must dismiss it.

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 30th day of January 2008.