

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39705
Docket No. MW-37303
08-3-NRAB-00003-020313
(02-3-313)**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call or allow Mr. M. D. Lucas to work extra in Sterling, Illinois, Seniority District T-3, Zone A, between December 7, 2000 and January 1, 2001, and instead called and assigned junior employee H. H. Belmonte. (System File 3KB-6698T/1264487 CNW)**
- (2) As a consequence of the violation referred to in Part (1), above, Claimant M. D. Lucas shall now “. . . be compensated ninety-six (96) hours straight time, thirty-two (32) hours holiday and thirty-two (32) hours rate and one half, for his loss of work opportunity.”**

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.

In study of the record the Board finds substantial reason to concur with the Carrier's argument that the dispute be dismissed without consideration of the claim on its merits account it not having been presented in a timely manner pursuant to Rule 21, "Time Limit On Claims," of the applicable Agreement.

Rule 21 prescribes in part here pertinent as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. . . ."

The claim alleges the occurrence which gave rise to the issue in dispute was December 7, 2000. The claim was not presented in writing to the authorized Officer of the Carrier until February 8, 2001. It is thus evident that presentation of the claim was made two days outside the time limits prescribed by Rule 21.

While the Organization submits that its General Chairman was agreeable during conference on the property to abandon the portion of the claim work performed by the junior employee prior to December 11, 2000, it is to be noted that the Carrier refused to concur with such handling of the claim.

The Carrier's procedural objection that the claim is time-barred being well taken, the claim must be dismissed without the Board reaching out to the merits of the claim.

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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 26th day of May 2009.