

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40764
Docket No. MS-41050
10-3-NRAB-00003-090399**

The Third Division consisted of the regular members and in addition Referee Martin W. Fingerhut when award was rendered.

**PARTIES TO DISPUTE: (Anthony DiAngelo
(National Railroad Passenger Corporation (Amtrak))**

STATEMENT OF CLAIM:

- “1. I, Anthony DiAngelo, do hereby file this complaint against my Union (Brotherhood of Maintenance of Way Employees) and the employer National Passenger Railroad Corporation, (sic) d/b/a Amtrak for violations of the National Labor Relations Act § 8(b)(4)(D) and National Railway Adjustment Board (sic) laws.**
- 2. I have been a member of my Union for approximately 28 years and have worked for Amtrak in various capacities. Presently, my job title is Repairman Foreman. The purpose of my complaint is that my Union has and continues to violate my rights regarding overtime work by allowing lesser qualified or class level employees to work overtime while excluding me from the opportunity. Specifically, my Union is allowing operators out of craft to perform job duties which they are not qualified to perform, thus taking overtime opportunities away from me.**
- 3. I have made numerous complaints (attached for your review) to various ranking members of my Union, but I have not received any substantive response or correction to the foregoing illegal practices.**
- 4. I am seeking any and all remedies available to me through the National Railway Adjustment Board (sic).”**

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 Petitioner holds the position of Repairman Foreman and contends that his Agreement rights were violated when “lesser qualified or class level employees” were allowed to work overtime “while excluding [him] from the opportunity.” The claim names both the Carrier and the Organization as having violated his rights, and asserts that their conduct violated “the National Labor Relations Act Section 8(b)(4)(D) and the National Railway Adjustment Board (sic) laws.” The Statement of Claim also alleges that Petitioner had made “numerous complaints (attached for your review) to ranking members of my Union. . . .” No documents were attached.

The Carrier’s defenses to the claim raise procedural and merit issues. The contents of the Statement of Claim make it obvious that additional defenses of a jurisdictional nature could have been raised as well. For purposes of this decision, however, we will confine our consideration to one of the procedural defenses raised by the Carrier, which we find requires dismissal of the claim.

The Carrier points out that the Statement of Claim does not refer to any particular incident, or any on-property handling of a particular claim. There is no reference to a specific time or place where an alleged violation occurred. The only previous claims by the Petitioner alleging overtime deprivation of which the Carrier is aware dealt with alleged occurrences in April 2003 and September 2006. Both claims were handled by the Brotherhood of Maintenance of Way Employes representing the Petitioner and both were eventually denied by the highest designated officer of the

Carrier. The final denial of the April 2003 claim was made on April 8, 2004, and the final denial of the September 2006 claim was made on January 16, 2008. Rule 64(d) of the Agreement between the Carrier and the Organization provides, in pertinent part:

“All claims and grievances involved in a decision by the highest designated officer shall be barred unless within one hundred eighty five (185) days from the date of said officer’s decision, proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board”

The Statement of Claim before the Board is dated March 30, 2009, well beyond the 185-day limit of either claim, and accordingly, under the provision of Rule 64 both claims would be barred.

It is possible, of course, that the Petitioner’s claim in this case is not connected with either of the above claims, but arises from some other occurrence. The Statement of Claim, however, does not refer to any such incident and the Carrier states it has no record of any other claim having been filed as of the date of the submission to the Board. Without evidence of any additional claim being filed, the Petitioner is confronted with Rule 64(b). That Rule provides:

“(b) All Claims or grievances must be presented in writing by or on behalf of the employee involved to the designated officer of AMTRAK authorized to receive same, within sixty (60) days from the date of the occurrence on which the Claim is based.”

Inasmuch as there is no evidence of any “occurrence on which the Claim is based,” obviously there is no evidence of compliance with Rule 64(b). Thus, under any circumstance, the claim must be dismissed.

Notwithstanding the foregoing, there does not appear to be any dispute between Labor and Management as to the assignment of overtime under these circumstances.

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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 15th day of December 2010.