

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx when award was rendered.

(Richard J. Finch
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Please accept this as my intent to file a written submission to the N.R.A.B. concerning a protest of the awarding of the position of Electronic Technician to T.M. Finch and subsequently to R.L. Deam, employees on the Pittsburgh Division of the Central Region, Conrail.

My protest to this award procedure was last denied in letter dated September 11, 1985 by G.F. Bent Senior Director-Labor Relations, Conrail; I am advised that my protest is still timely in accordance with the applicable provisions of the scheduled agreement between the Brotherhood of Railroad signalmen and Conrail."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

This dispute involves an allegation by the Claimant that he was improperly denied the award of a bid position of Electronic Technician. The claim was denied by the Carrier's highest designated officer on June 24, 1985. The Claimant gave Notice of Intent to process the dispute to the Board on May 1, 1986, in excess of nine months after the Carrier's declination. Rule 4-K-1(d) reads as follows:

"(d) A grievance or claim denied in accordance with paragraph (c) will be considered closed unless within nine (9) months from the date of the decision of the Senior Director-Labor Relations proceedings are instituted before the National Railroad Adjustment Board or such other Board as may be legally substituted therefor under the Railway Labor Act."

The matter must therefore be considered "closed" on the basis of the Carrier's last denial. The Claimant argued that the time limit was, in effect, extended because, following a telephone conversation with the Claimant, the Carrier's Senior Director-Labor Relations made a further response on September 11, 1985. This further letter cannot be read to make such extension. Such letter carefully stated that the "protest . . . remains denied" (emphasis added). The Board may not vary the application of the terms of the Agreement, and the appeal to the Board must be found to be untimely.

Further, the record indicates that the complained-of selection of another employee for the position of Electronic Technician was pursuant to a procedure agreed upon by the Carrier and the Organization and thus the Claimant's position is without support.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.