

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28165  
Docket No. MS-27331  
89-3-86-3-544

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Tony C. Slater  
PARTIES TO DISPUTE: (  
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of Mr. T. C. Slater, who was a regularly assigned laborer on Steel Gang No. 2-981, that the Agreement was violated when on May 10, 1985 Carrier allegedly placed Claimant on force reduction without prior notice as required by Rule 8, Force Reduction, of the schedule agreement."

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.

Claimant in this case, Laborer T. C. Slater, with an employment date of September 16, 1981, was the most junior man on Steel Gang #2 working in the vicinity of Federal, Wyoming at the time relevant to this dispute. The instant claim involves a factual disagreement as to whether Claimant on May 10, 1985, was furloughed in a force reduction requiring five working days advance notice. Claimant requests payment of five days pay at the pro rata rate based on his contention that he was not given the requisite advance notice.

Preliminarily, however, and before the instant case can be reached on the merits, Carrier has raised a threshold procedural question which, if answered in the affirmative, would effectively divest this Board of jurisdiction. Carrier alleges that the Claimant through his Counsel did not appeal this Claim to the Board until July 23, 1986. Since the claim was declined by Carrier's highest designated officer by letter dated October 21, 1985, Carrier contends that proceedings were not instituted before this Board within a timely manner, as the July 23, 1986, notice of intent filed by Claimant is not within the nine (9) month time limitation provided in Rule 42 (C) of the schedule Agreement.

The employee does not dispute the factual allegations advanced by the Carrier, but argues instead that a procedural error committed by the Carrier following the initial filing of the Claim takes precedence and requires that the Claim now be sustained in its entirety. The employee maintains that Carrier did not timely respond to its initial Claim allegedly filed with Carrier's Chief Engineer on June 7, 1985. Carrier has denied having record of such Claim or having received such letter.

Review of the correspondence on the property shows that Carrier on May 7, 1986, called to the Organization's attention that it had no record of receipt of a June 7, 1985, Claim letter. The Organization could have rectified the alleged omission by simply supplying Carrier with a copy of the Claim while the dispute was being processed on the property. As the record stands, however, the critical letter was not provided until it became an attachment in the employee's Submission. Since it is well established that the Board cannot consider new evidence which was not developed on the property, we must find that the employee's Exhibit 2 is inadmissible, and, therefore, the employee's procedural argument must be rejected.

We concur with the Carrier's contention that the matter before us is not timely nor was it handled in the manner prescribed by the collective bargaining agreement. Having failed to file his notice to this Board within the requisite time frame, the employee did not handle the claim in the "usual manner" as set forth in Section 3, First (1) of the Railway Labor Act, which states:

- "(1) the disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

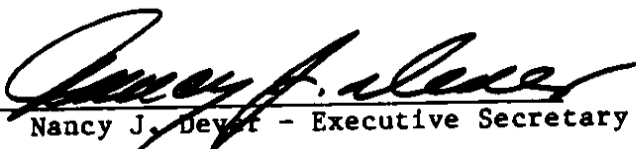
Our jurisdiction is limited to those cases handled in the "usual manner." See Third Division Awards 27502, 27042, 27218, 27168. We, therefore, have no alternative but to dismiss this Claim.

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 16th day of October 1989.