Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28880
Docket No. MS-29230
91-3-90-3-111

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

PARTIES TO DISPUTE: (William C. Simmers
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"1. Breach of the agreement entered into by and between the Consolidated Rail Corporation and the Brotherhood of Railroad Signalmen, effective September 1, 1981, in that employees with less seniority than William C. Simmers were employed in Williamsport, PA from October 15, 1987 until January 5, 1988, in violation of Mr. Simmers' seniority right under the agreement;

2. On or about November 12, 1987, a claim was presented on behalf of William C. Simmers by Jack L. Clarkson, Local Chairman, Lodge No. 63 of the Brotherhood of Railroad Signalmen, which claim was never denied in writing by the Consolidated Rail Corporation, such that under Rule 4-K-1(a) of the Agreement between the Consolidated Rail Corporation and the Brotherhood of Railway Signalmen requires that 'the claim shall be allowed as presented';

3. In addition, on January 23, 1988, Jack L. Clarkson, as Local Chairman of the Brotherhood of Railway Signalmen, Lodge No. 63 again wrote to Mr. S. D. Lucas, Supervisor of Communications and Signals, Consolidated Rail Corporation and advised that under the agreement effective September 1, 1981, Mr. Simmers' claim in the amount of $6,686.64 should be paid to Mr. William C. Simmers representing 43 work days at eight hours per day for a total of 264 hours at $14.03 per hour for that time frame from October 15, 1987 to November 30, 1987, and for 26 work days at eight hours per day for a total of 208 hours at a rate of $14.34, for that time frame from December 1, 1987 to January 5, 1988, when men with less seniority than Mr. Simmers were employed by the Consolidated Rail Corporation, which claim, again was not denied in writing within 60 days under Rule 4-K-1(a) such that under the agreement, 'the claim shall be allowed as presented';

4. On or about May 10, 1988, Mr. Simmers authorized the Brotherhood of Railroad Signalmen to compromise his claim, and limit it to the payment of eight hours, which offer of compromise was relayed to the Consolidated Rail Corporation on or about June 24, 1988 in a telephone call from Dennis M. Boston to A. J. Licate of Consolidate Rail Corporation;

5. This offer of compromise on the part of Mr. William Simmers was never accepted by Consolidated Rail Corporation, and the offer of compromise was revoked and withdraw by letter dated August 25, 1988, and again in a letter dated September 6, 1988;

6. The Consolidated Rail Corporation then issued a check dated September 6, 1988 payable to Mr. William Simmers for eight hours of work, and claims that it accepted the offer of compromise, which was previously withdrawn;

7. It is hereby requested that an award be entered in favor of Mr. William Simmers and against the Consolidated Rail Corporation for the full amount that Mr. Simmers is entitled to as a result of the breach of the agreement governing seniority and recall rights."

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.

On November 8, 1988, the parties met and discussed this claim for $6,686.64 for an alleged violation of Rules 2-A-1(d) and 4-K-1(a). By letter of January 6, 1989, the Carrier's Senior Director of Labor Relations denied the claim. On January 16, 1989, the General Chairman rejected the denial and on February 17, 1989, the Carrier's Senior Director of Labor Relations reaffirmed his denial. On February 15, 1990, the Claimant served notice to the Third Division, National Railroad Adjustment Board, of his intention to file an Ex-Parte Submission seeking an award against the Carrier.

The Carrier maintains the case is procedurally defective and should be dismissed because the controlling Agreement provides that disputes must be filed with the Board within nine (9) months of the Senior Director's decision. The language of Article 4-K-1(d) clearly supports such a conclusion. It states:

> "A grievance or claim denied in accordance with Paragraph (C) will be considered closed unless within nine (9) months from the date of decision of the Senior Director of 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."

Given this clear directive, we will dismiss this claim as procedurally defective.

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 30th day of July 1991.