

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30072
Docket No. MS-31578
94-3-93-3-478

PARTIES TO DISPUTE: (L. A. McCabe
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"TCU has failed to properly represent me causing the loss of over \$17, 000 in wages. A time claim involving scope violations was filed with District Chairman Meizingei and it was ignored. Follow up letters including General Chairman H.W. Randolph Jr. were also ignored.

When Mr. Meizingei resigned to take a position with Conrail's Labor Department, I contacted his replacement, Mr. F. Lindsay, and he began an investigation and filed a claim against Conrail.

Conrail denied the claim based on not being filed in a timely manner and that I had retired. I started the claim in 1987 and retired in July 1990.

TCU allowed me the normal objections to the point that they advise my only recourse is to file a claim with the National Railroad (sic) Adjustment Board by April 30, 1993 which I am doing as McCabe vs TCU."

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 employe 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.

The claim before the Board is hypothesized on the contention that certain Supervisors outside the scope of the Agreement, performed work reserved by Agreement, to Claimant's craft (Clerks).

A review of the on-property handling leaves the Board in a quandary as to who did violate the Agreement and when.

We do know, or at least we can assume with reasonable certainty that some Supervisor did answer the phone, but as to what part of the conversation constituted a violation of the Agreement we have not been made a privy to. Assertions and allegations cannot be accepted as substitutes for evidence.

This fact, standing alone, would have been sufficient grounds to deny the claim, but the procedural error of filing the claim well beyond the 60 days stipulated in Rule 45(a) was an act that precludes this Board from ruling on the merits and demands that this claim be dismissed as it has not been afforded the "...usual and customary handling..." as stated in Section 153 First(i) of the Railway Labor Act. (Claim filed August 29, 1990, alluding to a November 11, 1987 date when the alleged violation commenced.)

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.