

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31869
Docket No. MW-30823
97-3-92-3-658**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1) The Agreement was violated when the Carrier failed and refused to effectuate the monetary settlement by the findings of SBA No. 976 as stipulated by the provisions of said Agreement (System Docket MW-2038)**
- 2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate Mr. Blackie '...10% interest on the monetary amount of the award for each thirty day period (pro rated for periods of less than 30 days) from May 26, 1991 until such time as the payment is made.'"**

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.

This dispute centers upon whether this Board has jurisdiction over a matter previously decided by Special Board of Adjustment (SBA) No. 976.

A. Blackie (Claimant) has established and holds seniority within Carrier's Maintenance of Way Department. Prior to the date this dispute arose, Claimant was suspended from service for approximately four (4) months as a result of a disciplinary decision. The matter was progressed, in accordance with Rule 27 (Discipline, Hearings and Appeals) to SBA 976 which has exclusive jurisdiction over disciplinary disputes between the parties.

In Award 304, dated April 11, 1991, SBA 976 disposed of Mr. Blackie's claim stating:

"There is sufficient evidence to support Carrier's conclusion, however, considering all factors involved, we conclude that a 15 day suspension would be more commensurate with the offense."

On or about August 13, 1991, Carrier finally paid Mr. Blackie the monetary damages directed by SBA 976 in its April 11, 1991 Award 304. In the meantime, however, on July 19, 1991, the Organization submitted the instant claim on behalf of Mr. Blackie asserting Carrier non-compliance with the terms of the Agreement establishing SBA 976:

"Under the clear terms of this agreement the Carrier was obligated to compensate claimant 45 days from April 11, 1991. This would require compensation by May 26, 1991. Carrier's failure to 'effect monetary settlement due' is in violation of the Agreement. The Union would require the following to resolve this claim:

1. Immediately compensate claimant for all money owed as a result of Award Number 304.
2. Pay 10% interest on the monetary amount of the award for each thirty day period (pro rated for periods of less than 30 days) from May 26, 1991 until such time as the payment is made."

Item G of the SBA 976 Agreement, dated January 8, 1986, the specific provision of the SBA 976 Agreement invoked by the Organization in support of this claim, reads as follows:

"The Board shall make findings of fact and render an award on each case submitted to it not later than the next scheduled hearing date. Such findings and award shall be in writing, shall be final and binding upon the parties, and, if in favor of the petitioner, shall direct the Carrier to comply therewith on or before a specified date, which shall be fifteen (15) calendar days following date of award for restoration of dismissed employees and forty-five (45) calendar days following the date of award to effect monetary settlement due."

On July 23, 1991, Carrier responded to the Organization stating that the Award was being processed for payment. Carrier subsequently sent Claimant the following payment schedule in August 1991 based on the earnings of A. R. Robenolt #540490 from June 4, to October 22, 1990, and S. M. Kaplan #540552 from October 23, to November 23, 1990:

June 1990 -	\$ 774.30
July 1990 -	\$1,862.64
August 1990 -	-0-
September 1990 -	\$1,613.09
October 1990 -	\$2,091.76
November 1990 -	\$1,409.35
Total	\$7,301.14

In responding to the Organization's claim for interest, Carrier asserted that:

"Records show Award 304 of SBA 976 was executed on April 11, 1991, and Claimant was paid the amount due on payroll period ending August 6, 1991. It is your contention that because of the delay in effectuating the award, the Claimant is entitled to 10% interest from May 26, 1991, until the date the payment was made. We disagree.

Albeit it was unfortunate that administrative problems developed in the processing of the award, there are no provisions in the Scheduled Agreement, nor in the January 8, 1986 [SBA 976] Agreement that

established the above referenced Board that provides for the interest penalty that you seek. Accordingly, the claim is denied."

The threshold issue to be decided in this matter is whether the Board has jurisdiction over the subject matter of the submitted claim. As initially filed, this claim sought payment of backpay as ordered by SBA No. 976 Award 304, as well as interest on the remedial damages for failure to timely implement that Award. It appears that the monetary damages initially awarded by SBA 976 were paid, albeit in tardy fashion under Item G of the SBA 976 Agreement. The question remaining in this claim is whether Carrier should be assessed an interest penalty for that admitted untimely compliance with Award 304 of SBA 976.

The Railway Labor Act provides for the filing of an action in a United States District Court to enforce an award of the National Railroad Adjustment Board or arbitration tribunal of comparable jurisdiction. Section 3, First (p) of the Act, states in part:

"If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises...."

Of greater significance, however, is Paragraph H of the January 8, 1986 Agreement between the Parties establishing and governing the operations of SBA 976:

"In case a dispute arises involving an interpretation or application of an award while the Board is in existence or upon recall within thirty (30) calendar days thereafter, the Board, upon request of either party, shall interpret the award in light of the dispute."

The claim now before us clearly presents a dispute involving the application of Award 304 of SBA 976, properly referable to that Board under the terms of Paragraph H, *supra*. We are compelled to dismiss the claim for lack of subject matter jurisdiction.

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 4th day of March 1997.