

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32185
Docket No. MW-31905
97-3-94-3-231**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly disqualified Mr. M. T. Salazar from his position as a grinder operator on May 29, 1992 (System File S-P-480-W/MWB-92-12-23B).**
- (2) As a consequence of the violation referred to in Part (1) above:**

'... we request that the disqualification be lifted and Claimant be reinstated as grinder operator at Klamath Falls including the right to bump anyone subsequently assigned thereto. We also request that he be paid the difference between sectionman and grinder operator wages and he be paid overtime at time and one half rate while traveling between Klamath Falls and other locations where he is being required to commute to hold a job such as but not limited to Chemult, Bend, and regional gangs at Moody, Oregon. We also request that he be paid the standard BN rate for such miles traveled. This is an open and continuing claim until the disqualification is recinded (sic) and Claimant M. T. Salazar is allowed to return to Klamath Falls grinder operator position.'"

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.

The dispute involves the fact that Claimant was a previously qualified Grinder Operator who was initially in this dispute assigned to the position of Truck Driver. Claimant was unable to meet Department of Transportation (DOT) qualifications for the Truck Driver position and therefore attempted to displace back to Grinder Operator by bumping a junior employee. By notice dated May 29, 1992, Claimant was disqualified as a Grinder Operator because the "grinder operator, and welder must be DOT qualified."

The Organization requested an unjust Hearing which was held on June 29, 1992. At the Hearing, the Organization argued and presented testimony that the Claimant was qualified for the Grinder Operator position. The Organization argued that the Claimant stepped down without dispute from the Truck Driver position because that position required DOT qualifications. However, the position of Grinder Operator was covered by Rule 55L which states:

"An employe assigned to the operation of a grinding device, performing all grinder operation, either preparatory or finishing, and including the use of the cutting torch, shall be classified as a grinder operator."

It is the Organization's position that the Carrier has violated the Agreement by denying Claimant displacement rights based upon an arbitrary DOT requirements for unnecessary responsibilities of truck driving.

The Carrier argues that the Claimant was unqualified. As indicated in the transcript and on-property correspondence, the DOT requirements became effective April 1, 1992. Claimant was aware of the requirements which were listed on Bulletins when the Welding Truck exceeded the 26,000 gross vehicle weight. Claimant had already been disqualified from his Truck Driver position for lack of a Commercial Driver's License (CDL). In fact, Claimant had failed to qualify for a CDL on six different occasions. The Carrier maintains that the qualification is necessary as this is a two man crew which must share the truck and associated responsibilities. Accordingly, the requirement for the Grinder Operator position is related to working conditions and is appropriate.

The Board cannot reach the merits of this record. The Board notes that the occurrence upon which the claim is based was the May 29, 1992 disqualification. That disqualification was protested by letter of June 11, 1992. After postponement an unjust Hearing was held on June 26, 1992. Carrier response was issued July 28, 1992 upholding the disqualification. A dispute over the September 22, 1992 date of claim has been carefully studied. Carrier's position is that the claim is defective in that it was not "submitted within 60 days of date of occurrence on which the claim is based." The Organization asserts that it was filed within 60 days of the July 28, 1992 decision to uphold the original disqualification. The Organization maintains that such is Agreement provided in that if the unjust Hearing had reinstated Claimant, there would be no claim. To the Organization, the violation was the result of the unjust Hearing.

The Board has read Rule 42. We find no support for the Organization's position in the Rule or in any evidence or argument posited. The Board is forced to reach a procedural conclusion when the parties dispute the procedural adequacy of a claim. We are without authority to ignore the Agreement or issue. Rule 42 contains a time limit provision which was not followed here. We are constrained by this record to dismiss the claim. There is no evidence that the June 11, 1992 request for an unjust Hearing was a "claim" within the meaning of Rule 42, filed with the appropriate Carrier officer, or copied thereto and containing the claim as progressed on property. There is no evidence proffered by the Organization of claims on this property filed routinely and/or by practice from date of upholding of disqualification, or that an unjust Hearing suspends the time limits. The actual claim which was presented to this Board for decision does not mirror the June 26, 1992 concluding statement, but is a direct quote from the letter of September 22, 1992 filing claim based upon the May 29, 1992 disqualification. This claim is time barred coming 102 days after the incident upon which it is based.

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 13th day of August 1997.