

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33477
Docket No. MW-32349
99-3-95-3-189**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier improperly omitted the name of Mr. D. D. Sanno from the 1993 Harrisburg Seniority District BMW B&B Foreman’s Roster, which was not posted in accordance with Section 6(a) of Rule 4 and which the Carrier failed and refused to correct after being notified thereof (System Docker MW-3225).

(2) As a consequence of the violation referred to in Part (1) above, Claimant D. D. Sanno’s seniority date of November 30, 1992 shall be entered into its appropriate roster standing on the 1993 Harrisburg Seniority District BMW B&B Foreman’s Roster.”

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.

On November 23, 1993, Claimant wrote to Carrier's Manager Labor Relations "appealing the 1993 Seniority Roster," because the roster failed to reflect Claimant's seniority as a B&B Foreman. Applicable to this dispute is Rule 4, Section 6, which provides:

"(a) A roster, revised as of January 1 and to be posted March 1, showing the employee's seniority date in the appropriate seniority district will be posted within such seniority district at headquarter points where employees are required to report for work. Copies of all rosters will be furnished the General Chairman and the involved local representative(s).

(b) Employees shall have 90 days from the date the roster is posted to file a protest, in writing, with the designated officer of the Company, with copy furnished the General Chairman and local representative. Employees off duty on leave of absence, furlough, sickness, disability, jury duty or suspension at the time the roster is posted, will have not less than 90 days from the date they return to duty to enter protest."

Rule 4, Section 6 clearly and unambiguously requires that seniority rosters be posted March 1 of each year and that roster protests be filed within 90 days thereafter. A clear line of authority interpreting this rule requires that claims deriving from untimely roster protests be dismissed. See, e.g., Third Division Awards 27313, 27314, 29116, and 30776.

There is no dispute that Claimant filed his roster protest many months after the deadline. The Organization seeks to avoid the consequences of Claimant's delay by arguing that the roster was not properly posted at the headquarters point where Claimant was required to report for work. The Organization relies on a statement from Claimant's supervisor that the roster disappeared three hours after it was posted and, consequently, the supervisor kept another copy in his desk for employees to consult.

The supervisor's statement indicates that the roster was posted. Furthermore, there is no evidence that Carrier was responsible for its disappearance and the Organization has presented no evidence of what Carrier could or should have done to prevent unauthorized removals of seniority roster postings. The supervisor acted reasonably in keeping another copy in his desk. Although Claimant asserted that he was unaware of the copy in his supervisor's desk, the clear language of the Agreement placed

Claimant on notice that rosters were available as of March 1 and that protests must be filed within 90 days thereafter. Accordingly, we see no basis for deviating from the prior Awards between the parties dismissing claims based on untimely roster protests.

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 22nd day of September 1999.