

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36549
Docket No. MS-36745
03-3-01-3-319**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(George Mitchell
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “1. Does an extra board personnel assigned to a position not manned by permanent personnel unequivocally take the days of the position?**
- 2. Does the carrier have the right to abandon a separate written agreement without notice?**
- 3. If the carrier abandons his duty to maintain rules governing the manner of working Extra Board employees under a separate agreement covered in Rule 56, is the employee held accountable for the carriers negligence?”**

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.

A review of the record indicates that the original incident giving rise to the dispute now before the Board was the subject of a claim initiated on July 22, 1999 by the Transportation Communications International Union (TCIU) on the Claimant's behalf. The claim alleged that the Carrier violated Rules 38 and 39, the Doubling Agreement, and other related Rules of the Agreement when another employee was given preference over the Claimant for holiday pay on May 31, 1999.

The Carrier denied the claim by letter dated September 9, 1999. It was appealed by the Organization and conferenced on the property without resolution. The Assistant Director Labor Relations January 31, 2000 letter confirms the discussion of the claim in conference.

By letter dated June 16, 2001, the Claimant advised the Board of his intent to file an Ex Parte Submission before the appropriate division of the National Railroad Adjustment Board as provided in Section 3 of the Railway Labor Act. His claim consists of three questions. The Carrier, while denying the Claimant's contentions on the merits, also contends that the claim cannot be considered by the Board because of the Claimant's failure to handle the claim "in the usual manner" up to the point of presenting it before the Board.

The record supports the Carrier's contention. Based on our careful review, we must conclude that the questions posed within the Claimant's Statement of Claim have never been made part of the record in any claim or grievance involving the Claimant. They have no discernible connection to the issue identified within the initial filing of the claim by the Organization on the Claimant's behalf. The Board does not have jurisdiction to resolve claims which were not properly handled in the first instance on the property.

Additionally, under Rule 46 (d) of the Agreement, the Claimant had nine months from the Carrier's January 31, 2000 declination to progress his original claim before the Board. The Claimant's June 16, 2001 Notice of Intent is not within the nine month time limitation provided in Rule 46 (d) of the Agreement. As such, the instant claim is jurisdictionally defective.

Based on the foregoing, we have no alternative but to dismiss the claim.

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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 8th day of May 2003.