

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37861
Docket No. SG-37690
06-3-03-3-022**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad)

STATEMENT OF CLAIM:"

- "1. Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP).
2. Claim on behalf of J. L. Brock, for 152 hours at the straight time rate, three hours at the time and one-half rate of pay and \$4,252.00 in lost travel pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 36 and 80, when it used another employee instead of the Claimant to work in El Paso, Texas, beginning October 8, 2001 through November 30, 2001, depriving the Claimant of the opportunity to perform the work. Carrier's File No. 1297906. General Chairman's File No. W-13-153. BRS File Case No. 1283-UP."

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.

Before the merits of this case, the Carrier raised the issue that the Organization violated the time limits in Rule 69A, which reads:

RULE 69 - CLAIMS AND GRIEVANCES

"A. All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim be disallowed, the Carrier will, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this will not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

By letter dated December 27 postmarked December 28, 2001 the Organization submitted the claim at issue. The claim contended that beginning October 8, 2001, the Carrier had violated Rules 13, 36 and 80 of the Agreement by assigning an employee junior to the Claimant to work outside of their construction zone in El Paso, Texas. The claim alleged that the Claimant was entitled to additional pay for the time that the other employee worked outside the zone and that the Claimant was entitled to travel pay for trips he would have taken if he had been assigned to the position in El Paso.

It is obvious that the claim was not filed until after the 60-day time limit specified in Rule 69.

The Organization admits that the claim was not timely, but it contends that it is a "continuing claim."

The Carrier argues that the claim had to be filed within 60 days of the first date of the alleged violation. In support it cites Third Division Award 29260 which held:

“Here, the ‘separate and definitive action’ occurred when the junior employee was assigned to return to service on Rail Gang 5XII in February 1986. We concur with Carrier's contention that while the claim as stated may have had potential continuing liability, it is one which has as its basis an alleged violation which occurred on a particular date, that is, the date on which the junior employee was first used on Rail Gang 5XII.”

Having raised the issue on the property, we concur that the claim is untimely and is, therefore, barred.

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 1st day of August 2006.