

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38239
Docket No. MW-37283
07-3-02-3-293

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

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees**
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to compensate Machine Operator D. P. Dziengel for his meal allowance, Camper reimbursement, personal mileage for gang moves and weekend travel allowance for the months of October and November, 1999 (System File R1.645/8-00319-378).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. P. Dziengel shall now be compensated for one thousand nine hundred fifteen dollars and forty cents (\$1,915.40) for the aforesaid expenses and allowances.”**

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 issue in dispute calls for a determination as to whether a timely and valid claim exists for payment of expenses to the Claimant for work performed as a Machine Operator on a Production Crew during the months of October and November 1999. The referenced expenses are those stipulated in Rule 35, "Travel Time and Expense for Employees Required to Live Away From Home Throughout Their Work Week," Article IX, "Expenses Away From Home," and Side Letter No. 6 of a May 1, 1997 Agreement.

Expense claim forms for October and November 1999 as signed by the Claimant with a date of February 5 were submitted to the Carrier with a February 8, 2001 letter of claim from the General Chairman.

It is the position of the Organization that the Claimant was not able to more timely submit his expense account forms "through a series of events," with the following rationale being offered for the delay:

"During the month of October 1999, Carrier began removing employees from service due to alleged expense irregularities. Claimant, along with a number of fellow employees, felt threatened to the point of not filing for expenses. After this office confirmed that Claimant had not filed for his expenses, information was gathered from other crew members' expenses already paid to provide the dates and locations for the crew during the months of October and November 1999, and is easily verified."

Before turning to the merits of the case, the Board will first note that we are not persuaded that the claim should be dismissed for lack of jurisdiction on the basis of a Carrier contention that the case was not handled pursuant to Agreement Rules and procedures governing claims and grievances.

The Board finds nothing contained in Rule 35, or the record as presented, that prescribes a time limit for the filing of the expenses at issue. Nor have we been directed to any Carrier policy that calls for expense claim forms, such as those in the instant dispute, to be filed within a time certain.

As stated above, the claim was presented on behalf of the Claimant by the General Chairman in a letter dated February 8, 2001, with the letter being addressed to the Manager Track Programs/Work Equipment. The Carrier's response to the

General Chairman did not mention a specific Rule, policy, or instructions as issued in support of a time limit contention, per se, offering only that time did not permit a verification of the expenses as claimed. The declination letter stated:

"Because these expenses are two years old, we are unable to verify amounts and dates. "Through a series of events" is insufficient reason and therefore this claim is denied in its entirety."

No specific contractual time limit Agreement Rule, policy, or instructions was cited when the Carrier subsequently replied to the Organization's appeal of the claim. The Carrier's letter of denial under date of June 1, 2001 said only the following:

"Claim is beyond any reasonable time limits for presentation and verification of expenses incurred not possible. Further, payment cannot be allowed for expenses based upon an estimate presented by the Organization as such, is not factual."

As concerns the merits of the claim, the Carrier offered the following in its letter of March 7, 2002 to the General Chairman:

"Contrary to your position, and I truly resent your statement that employees were being dismissed without due process, as you were a participant in each and every hearing conducted and your statement is totally untruthful. You then go on to allege that this Claimant did not file expense because he perceived he would be fired. Once again there is no support for such a statement. Mr. Kluska of my staff, never advised Claimant that these expenses you are now claiming would be paid. In fact, all your statements, are unsupported by any type of factual evidence and there is no evidence presented of Claimant incurring any of the expenses you suggest he is owed."

While reason would exist under normal circumstances to question a contention that an employee was fearful of being fired for submitting an expense form, there is no question from the above Carrier statement that it did, in fact, conduct a series of disciplinary Investigations into charges of alleged expense irregularities. Thus, it would seem that the Claimant had reason to have delayed presentation of his claim until he was certain that the amounts being claimed were not going to be disputed to the extent of subjecting him to a disciplinary Hearing.

As concerns the above reference to Mr. Kluska, the Carrier's response is to a statement contained in an appeal letter of January 30, 2002, wherein the General Chairman said: "During a subsequent meeting in Alexandria, Minnesota during the first week of February 2000, Mr. M. R. Kluska, of your staff, advised Claimant to get those expenses sent in for payment."

In the opinion of the Board, the Carrier refutation of the aforementioned assertion of the General Chairman that Kluska had advised the Claimant to get those expenses sent in for pay should have been in the form of an evidentiary statement of record from Kluska. Certainly, the Carrier had sufficient time from the date of the General Chairman's letter (January 30, 2002) to the date of the Carrier's counter contention (March 7, 2002) to have obtained a statement from Kluska.

In regard to the expense claim forms, it is evident that the Claimant gave clear explanations for each date of a claimed expense. Nothing of record shows that the Carrier disputed the amount of expense claimed as being other than as provided under Agreement Rules. The Carrier only asserted that it was unable to "verify" the dates and amounts as claimed.

The Board finds it difficult to comprehend the Carrier's position that it was not able to verify the information provided on the expense forms from its payroll and other production work records. As the General Chairman stated in several letters to the Carrier, the Claimant worked his assigned position of Machine Operator on the Production Crew from the start of the crew on April 5 through crew tie-up on November 11, 1999. Certainly, the Carrier retains records for a greater period than the time here at issue.

The Board also finds lacking in support of record the Carrier's contention that "no evidence" was presented of the Claimant incurring any of the expenses. Nothing was presented to establish that the Claimant was required to submit some form of evidentiary documentation in claiming an expense not in excess of the set amounts prescribed by the applicable Agreement Rules for meals, miles, camper allowance, or weekend allowance.

In the circumstances of record the Board finds that the claim must be allowed as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of July 2007.