

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39931
Docket No. MS-38768
09-3-NRAB-00003-050205
(05-3-205)

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

(Nicholas P. Lengares

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“The dispute concerns (1) the denial on or about March 30, 2004 of Mr. Lengares’s bid to a train dispatcher position in the carrier’s Philadelphia control center, and (2) the removal of his name from the Amtrak-American Train Dispatcher’s Department seniority list effective April 30, 2004. Mr. Lengares’s grievances were finally denied by the carrier’s director of labor relations Larry C. Hriczak, by letter dated August 20, 2004. Under the applicable working agreement, Mr. Lengares has 9 months from that date to file with the NRAB.

Mr. Lengares seeks an award on the question of whether his bid to the Philadelphia control center was improperly denied, and whether he was improperly removed from the said seniority list, and if so, what the remedy should be.

As to relief, Mr. Lengares requests that he be reinstated to the seniority list with all of his accumulated seniority to the date of reinstatement; that he be reinstated to a train dispatcher position to which he would have been entitled by virtue of his seniority had his bid been accepted and had he not been removed from the seniority list; that he receive full back pay and any lost benefits; and that he be awarded his attorney fees and expenses.”

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 January 11, 2002, the Claimant was employed as a Train Dispatcher at Carrier's New York Control Center (NYCC). On January 11, 2002, The Superior Court of the State of New Jersey entered a final restraining order against the Claimant which prohibited him, inter alia, "from having any (oral, written, personal or other) form of contact or communication with" the complainant in the civil action brought against him. The complainant was a coworker of the Claimant and the Carrier interpreted the order as barring the Claimant from working at the NYCC. On January 18, 2002, the Claimant was granted a 90-day leave of absence to enable him to resolve "a confidential civil matter in which you are involved." The parties are in dispute as to whether the leave of absence was extended beyond its original April 18, 2002 expiration. In March 2004, the Claimant bid for a Train Dispatcher position in the Carrier's Philadelphia CETC. The Claimant's grievance asserted that he was informed verbally on March 30, 2004, that the position had been awarded to another Dispatcher who the Claimant maintained had less seniority. The Claimant filed his claim on June 3, 2004.

The parties are in considerable conflict over whether the Claimant forfeited his Train Dispatcher seniority by failing to return from his leave of absence by April 18, 2002, whether he was covered by the Carrier's Agreement with the American Train Dispatchers, whether the Claimant could properly bid on the Philadelphia position, and whether the Claimant filed the claim with the proper Carrier officer.

We need not reach any of these issues because, on its face, the claim was not filed in a timely manner.

Rule 20(a) of the applicable Agreement provides, in relevant part:

“All claims or grievances other than those involving Discipline (Rule 19) must be presented in writing by or on behalf of the employee(s) involved, to the Superintendent within sixty (60) days from the date of the occurrence on which the claim or grievance is based. . . .”

On its face, the claim indicates that the occurrence on which the claim is based arose on March 30, 2004, when the Claimant was informed that he was not awarded the position in Philadelphia. Yet, the Claimant did not file his claim until June 3, 2004, outside the 60-day period during which the claim must be filed. Accordingly, the claim was not filed in a timely manner and must be denied.

AWARD

Claim denied.

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 31st day of August 2009.