

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40556
Docket No. MS-40579
10-3-NRAB-00003-080460**

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

PARTIES TO DISPUTE: (James A. Pauly
(BNSF Railway Company

STATEMENT OF CLAIM:

“Did BNSF Labor Relations allow a investigation to be allowed as presented within seven (7) calendar days as stated in Rule 56 of the Agreement with the TCU by not disallowing the claim within the sixty (60) days as stipulated by Rule 59 of the Agreement with the TCU that states in part:

Should any such claim or grievance be disallowed, the carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver to the contentions of the Carrier as to other similar claims or grievances.

Shall the claimant be compensated eight (8) hours pro rata pay at WGR 11 for each and every day Claimant is not granted an unjust treatment hearing, commencing with March 4, 2008, and continuing until Unjust Treatment Hearing is held?

Did the Carrier violate the provisions of Rules 2, 56, 58, and 64 of the TCU Agreement not specifically stated herein, at Brainerd, Minnesota on March 4, 2008, by not acknowledging a properly submitted request for an Unjust Treatment Hearing submitted by Mr. James A. Pauly on February 27, 2008?

Shall the Carrier now be required to reverse its decision and allow a hearing on all the facts pertaining to Mr. Pauly's situation arising to the formal request made, and hold the hearing in accordance with Rule 58 of the Agreement as per requested?"

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 facts underlying this dispute, a companion case to Third Division Awards 40555 and 40557 decided concurrently, are set forth at somewhat greater length in those decisions. Succinctly, after Claimant Pauly developed hearing problems causing the Carrier to become concerned for his safety, he was placed on medical leave of absence in 2003 pending resolution of his auditory issues. He then apparently failed to provide the medical reports repeatedly requested by the Carrier and consequently has remained in continuous medical leave status since that time.

On May 28, 2008, Board notified the Assistant Vice President - Labor Relations that the Claimant had submitted a Notice of Intent to file a Submission within 75 days involving an unadjusted dispute centering on these issues.

It is undisputed, however, that at no time had the Claimant previously filed a claim with the Carrier regarding this matter. The record is thus devoid of any

declination or other response from BNSF. Pursuant to Rules 59 and 60, the Claimant must commence a claim within 60 days of the date of occurrence. Yet, at no time had the Claimant previously filed a claim with the Carrier regarding this matter.

The Board concludes after careful review of the record that the Claimant has failed to process his claim consistent with the controlling terms of the Agreement. Notwithstanding, were the Board to reach the merits of this particular claim it would be bound to examine the record as established and would of necessity have to deny the claim for the same rationale as stated in Third Division Award 40555. In this claim a denial will serve as well as a dismissal.

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 29th day of June 2010.