

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40656
Docket No. SG-40345
10-3-NRAB-00003-080155

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Shared Assets:

Grievance on behalf of T. C. Bernhard, for an opportunity to select a ‘Home’ seniority district, account Carrier violated the current Signalmen’s Agreement, particularly Appendix (m) Attachment (1) part (d), when it refused to allow the Claimant to select a ‘Home’ seniority district on the Philadelphia/South Jersey roster and instead assigned his seniority to the North Jersey Shared Assets seniority district. Carrier’s File No. SG-0029 - T. C. Bernhard. General Chairman’s File No. WHK-57-025-0207. BRS File Case No. 13794-CR(SA).”

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 merits issue in this dispute involves Attachment 1 of Appendix M of the Agreement entered into on August 14, 1996, between the Carrier and the Organization. That provision, inter alia, concerned the seniority rights of employees who established seniority after the effective date of the Agreement.

The Carrier, while disagreeing with the Organization on the merits, took the position that the initial claim was filed untimely and that the claim must be dismissed for its procedural deficiency without reaching the merits. We agree. Rule 3-C-1 (c) of the Agreement provides:

“(c) An employee, or his union representative shall have ninety (90) calendar days from the date his name first appears on the seniority roster to protest, in writing, to the Manager-Labor Relations his seniority date or relative ranking thereon, except that when an employee is absent from his assignment on account of sickness, temporary disability, suspension, leave of absence or furlough at the time the seniority roster was posted, this time limit shall apply from the date the employee returns to duty.

If no written protest is made within the ninety (90) day period, no protest shall be entertained, unless the employee’s seniority date or his relative ranking is changed from that first shown, in which event he shall be permitted to make a protest within ninety (90) calendar days from the date of the change.”

The Claimant was hired on May 2, 2005. The first seniority roster on which his name appeared was posted on March 1, 2006. The initial claim was filed on November 5, 2006. In its initial response to the claim, and at each subsequent stage of appeal, the Carrier took the position that the claim was untimely under Rule 3-C-1 inasmuch as no “written protest [was] made within the ninety (90) day period.” While the Organization continued to argue the merits of the claim, it did not present any response to the Carrier’s procedural defense.

In its Submission to the Board, the Organization argues that Rule 3-C-1 has no application because the Carrier violated other provisions of the Agreement which specifically entitled the Claimant to seniority options open to him. Even assuming, arguendo, that such seniority rights did exist, one of the primary purposes of posting the seniority roster on March 1, 2006, was to provide the Claimant with the opportunity to challenge his seniority placement for any reason he believed applicable. He had 90 days to do so but failed to take advantage of the opportunity.

There are numerous Awards of this Board holding that under situations paralleling those here, a claim must be dismissed. See, for example, Second Division Awards 7414 and 11104, as well as Third Division Award 30776. The claim shall be dismissed.

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 November 2010.