

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40804
Docket No. MW-39221
10-3-NRAB-00003-0050544
(05-3-544)

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

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly bulletin and assign the system material foreman position on Gang 9039 after the incumbent A. Halstead was placed on medical leave of absence and instead improperly assigned Mr. C. Fleecs (System File D-04-25/1409763).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now bulletin and assign the Gang 9039 system material foreman position and Claimant R. Medrano shall be compensated at the applicable system material foreman rate of pay for all straight time and overtime hours worked thereon by Mr. C. Fleecs beginning on May 15, 2004 and continuing.”

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.

Although the Statement of Claim contains partial details, it fails to note that the incumbent of the System Material Foreman position began his medical leave of absence on November 14, 2003. The position was left vacant after that date. Certain incidental duties common to Foreman positions were absorbed by C. Fleecs, who held a Truck Driver Foreman position at the time and continuously since that time.

Two procedural issues must be addressed as threshold matters before the merits may be reached. The instant claim was not filed until July 8, 2004, which was approximately eight months after the medical leave of the incumbent began. The Carrier's initial denial of the claim raised a Rule 49(a) violation of the applicable 60-day filing time limit in addition to several contentions on the merits. In its appeal, the Organization asserted the matter was valid pursuant to Rule 49(b) which pertains to continuing violations. In the response by the Carrier's highest designated officer, the time limit objection was reaffirmed. In addition, the Carrier's response alleged that the appeal by other than the General Chairman of the Union Pacific Federation failed to comply with the requirement that the dispute be handled in the usual manner in accordance with the Railway Labor Act. In that regard, the Carrier challenged the jurisdiction of the Board to reach the merits as well. The Organization's later correspondence effectively ignored the Carrier's jurisdictional challenge.

We thoroughly reviewed and considered the contents of the on-property record. That review establishes that both of the Carrier's procedural objections must be accepted. The facts shown by the record do not constitute a continuing violation. Therefore, the claim was not timely filed and must be dismissed. In

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addition, the record does not establish that the dispute was handled on the property in the usual manner, which is an indispensable requirement for progressing the matter to the Board. Accordingly, the claim must be dismissed for this reason also.

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 15th day of December 2010.