

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43457  
Docket No. MW-44508  
19-3-NRAB-00003-170676**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when the award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division –  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Escanaba and Lake Superior Railroad**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to properly compile and timely post revised seniority rosters as mandated by Rule 14 beginning on July 1, 2016 and continuing (System File B-1614E-201 ELS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Grailer, G. Willman, B. Linna, J. Gravely, T. Davis, J. Brousseau, W. Hall, J. Berg, B. Parkhurst, D. Homernik, B. Lamson, D. Brazeau and T. Mayo shall now each >\*\*\* be compensated for an equal share of \$80.00 per calendar day for each day (\$5.00 per claimant; per calendar day) so long as the violation continues commencing from July 1, 2016 (first day of violation) continuing until such time as the Carrier complies with the agreement.’ (Emphasis in original).”**

**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 Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties' Agreement when, beginning on July 1, 2016, and continuing until August 29, 2016, it failed to post revised seniority rosters. The Carrier denied the claim.**

**The Organization contends that the instant claim should be sustained in its entirety because the Carrier admittedly violated the Agreement by failing to post a revised seniority roster, because the Carrier's arguments are without merit, because the Carrier therefore is obligated to pay the claim as presented, and because the requested remedy is reasonable. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because any violation that might have occurred was only a technical violation of Rule 14, because any technical violation of Rule 14 does not justify the substantial penalty requested by the Organization, and because the remedy demanded by the Organization is inappropriate.**

**The parties being unable to resolve their dispute, this matter came before this Board.**

**The Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated Rule 14 when it failed to post seniority rosters and properly compile and timely post the revised seniority rosters as required by Rule 14, starting on July 1, 2016, and continuing.**

**Rule 14 states the following:**

- “(a) Seniority rosters of employees of each sub-department and rank will be separately compiled. Copies will be furnished foremen and employees’ representatives, and foremen will post same in tool houses or outfit cars, at convenient places for inspection by employees affected.**
- (b) Seniority rosters will show the name and date of entry of the employee into the service of the railroad and date of promotion.**
- (c) Rosters will be revised and posted in June of each year and will be open to correction for a period of sixty (60) days from date of posting. Upon presentation of proof of error by an employee or his representative, such error will be corrected. If no protest is presented within sixty (60) days, the dates will stand as official and thereafter will not be subject to protest on any future rosters, except that any typographical errors will be corrected.”**

**A review of the record makes it clear that the Carrier failed to comply with Rule 14 in connection with a failure to post a revised seniority roster. Consequently, the Carrier was in violation of Rule 14 and that part of the claim is sustained.**

**With respect to the damages being demanded by the Organization, the Organization has failed to meet its burden of proof that any damage resulted from the Carrier’s failure to comply with Rule 14. Moreover, the Carrier has argued that the Organization sat on its rights for nearly fifteen years and, therefore, both parties were lax in the enforcement of Rule 14. Any damage was clearly de minimis.**

**Consequently, this Board shall find that the claim is sustained in part and denied in part. The Carrier clearly violated Rule 14 as charged by the Organization, but there will be no payment of any damages to any of the employees as a result of the violation.**

**The claim is sustained in part and denied in part. The Carrier acted in violation of Rule 14 but there will be no award of damages as set forth in the above decision.**

**AWARD**

**Claim sustained in accordance with the Findings.**

**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 1st day of March 2019.**