

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44341  
Docket No. MS-45471  
20-3-NRAB-00003-190301**

**The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Mark Skiba – Individual Petitioner**  
**(Illinois Central Railroad Company**

**STATEMENT OF CLAIM<sup>1</sup>:**

- (1) May the railroad remove claimant from a bid position, because he did not pass the training, and make such removal a disciplinary move without giving the employee an investigative hearing first, as required by IC-TCU CBA Rules 22(a) and 25? (MS 2017-001/003/005 and MS 2018-AA/FF)**
- (2) For claimant's first training disqualification -- Did the railroad intentionally ignore Rule 45 ("Training") whose language plainly and clearly updates and supersedes Rule 10, and did the railroad ignore rules 24, 25, and Appendix Q Section 4 (d), when it denied claimant a seniority displacement bump back to his previous bid position (material handler), and instead, wrongfully force him to the railroad's involuntary and undesirable assignment to the non-guaranteed on-call extra board? (MS 2017- 001/003/005)**

**Time Claim MS-2017-001/003/005, Guaranteed work lost when denied seniority displacement, violation of Rules 10, 24, 45 and Appendix Q Section 4(d) \$1,238.80**

- (3) For claimant's second training disqualification (for an bid and awarded permanent position as crew caller) did the railroad then interpret Rule 10 contrary to the way the railroad interpreted the rule regarding claimant's request to be returned to his previous bid position (material handler) the first time (as detailed in Dispute Question #2 above), by again, wrongfully forcing him to involuntary**

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<sup>1</sup> Claim information copied from M. Skiba's submission.

and undesirable assignment to the nonguaranteed on-call extra board? (MS 2018-AA/FF)

Time claim MS-2018-AA/FF, unauthorized pay deductions, violation of Rules 6, 8, 10, 15, 22(a), 24, 45 and 25, and “multiplicity of roles due process as specified in 45 USC 153 First (i). \$545.10

- (4) Did the railroad act properly under the CBA Rule 9 (d) 1 (Filling Short Vacancies) and did the railroad act properly under RLA Section 9(a) Eighth and 49 USC Chapter 8 156 Tenth, when it denied claimant’s Rule 9 request to, his contractual right as highest senior employee on the extra board, to decline assignments in remote areas significantly beyond the headquarters point. (a three hour commute each way)? Did the railroad then violate rule 25, when several requests for conference by claimant were then ignored by railroad? Did railroad violate rule 8(g) when forcing a senior employee to the non-guaranteed extra board ahead of all regularly scheduled junior employees? (MS-2017-002)

Time Claim MS-2017-008, Forced assignment outside domicile travel reimbursements violation of Rule 24, Rule 27, Rule 45(f)3, Rule 46, Appendix L(d) \$6,111.07.

- (5) Does the railroad have the right to universal management right of selection, to select unqualified junior employees, over senior qualified employees, for C exempt positions, as classified under the ambiguous language of Appendix G? (MS 2018-YY)

Time Claim MS-2018-YY, travel reimbursement caused by denial of Bulletin 238 return from leave displacement denial and denial of job, violation of Rule 14, 24, and Appendix G \$1978.64 (as of May 2, 2019, and accumulating into the future at the rate of \$760 per month, until dispute is settled.)

Additional Time Claims as follows:

The time claims incorporated herein, are as follows, they are presented dually:

- a. As a time claim that would not have happened if the railroad had in the very beginning followed rules 10 and rule 45 in tandem, and allowed his return to material handler position.
  - b. Each time claim stands on its own merits as specified CBA rules violated.
- (6) Time claim MS-2018-CC, Moving Allowances, violation of Rule 24, Rule 25, Rule 50, Appendix Q 7(b) and 12 (a), (b)(1,2), (d) and “multiplicity of roles” due process as specified in 45 USC 153 First (i). \$2452.72
- (7) Time Claim MS-2018-EE, Extra-board Guaranteed Work, violation of Rule 11, 24, Rule 25, 45(g)2, Appendix L Section C. \$487.36

**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.

Mark Skiba is employed by the Illinois Central Railroad Company (Carrier). According to his submission he was employed as a Utility Clerk in the Mechanical Department, at Flat Rock, Michigan. Mr. Skiba filed multiple claims in 2017 and 2018. All “claims” have been merged and for consideration before this Board for final adjudication.

The Carrier argues the Board must dismiss this claim in its entirety based on a lack of jurisdiction under Section 3 (i) of the Railway Labor Act:

**“The dispute between an employee or group of employees and a carrier or carriers growing out of grievance or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner, up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.” (emphasis added)**

The Carrier contends Mr. Skiba failed to follow the usual and customary manner for filing claims. For each of the alleged violations, Mr. Skiba wrote a letter and/or email to a Carrier representative. According to the record of evidence before this Board, the Carrier responded each time and provided instructions on the proper procedure to be followed including the correct person(s) to whom his correspondence must be addressed. Mr. Skiba failed to avail himself of the proper process. In several instances, the claims were elevated to the wrong Highest Designated Officer (HDO). It is Mr. Skiba’s responsibility to follow the established process. Mr. Skiba is a member of a collective bargaining unit and is represented by TCU (Organization). The Carrier and Organization have thoughtfully and carefully negotiated the grievance procedure. Mr. Skiba is required to follow that process even if he decides to represent himself. In order to pass this hurdle, Mr. Skiba has the burden to submit evidence showing what the accepted manner for filing a grievance is, and that he followed that process. He has failed to do so.

Mr. Skiba calls each of his complaints a “disputed question.” He contends his due process rights were violated when Carrier officials declined to hold a conference to address his claim of unjust treatment as afforded by Rule 24 of the collective bargaining agreement. Mr. Skiba argues the supervisors’ responses were drafted by the same person(s) to whom he filed his appeal for the next step. In response, the Carrier argues it handled each of his complaints in their usual and customary way. Supervisors are instructed to review grievances with a Labor Relations official to ensure they are handled consistently.

The Board finds the Carrier handled all of Mr. Skiba’s complaints properly when they were processed correctly. There are multiple steps to the grievance

procedure. Employees must begin by filing the grievance/complain with their immediate supervisor. It is not uncommon for an employer to have a process in place whereby supervisors contact Labor Relations. This process must be followed to ensure consistent handling of all grievances. The Carrier's Labor Relations department reviews the complaints and assists the supervisor draft a response. If the grievant/Claimant is dissatisfied with the response, he has the right to go to the next step in the process. According to the Agreement covering these parties, the next step is to appeal to the Director of Human Resources, or her designee. That person may be the same person who first reviewed the matter with the immediate supervisor. There is nothing improper or unusual about that.

Both parties argue the other failed to meet certain time frames. The Agreement contains specific time frames under which claims must be filed:

**“All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the company authorized to receive the same, within sixty days from the date of the occurrence on which the claim or grievance is based.” (emphasis added)**

Mr. Skiba contends the Carrier failed to conference some of his claims. There is ample evidence on the record before us, however, that the Carrier made numerous attempts to meet with and conference all of the claims Mr. Skiba presented. In the end the Carrier and Mr. Skiba made a date to meet but Mr. Skiba only wanted to discuss some of the claims. As stated above, Mr. Skiba has an obligation to follow the usual and customary process established as outlined in the Agreement. In this case, that procedure includes a final conferencing meeting. Failure to comply with the process can serve as grounds to dismiss a claim or claims.

The Carrier argues the Notice of Intent filed by Mr. Skiba contains issues, positions and evidence that were not presented during the on-property handling of his original claim(s). As such, the Carrier contends the claims contained in the Notice of Intent are new and/or amended and therefore are not properly before this Board. The Carrier also contends the new/amended claims are untimely. As noted by the Carrier numerous Boards have held that original claims cannot be supplemented or amended on appeal. When they are, Boards have found they lack the jurisdiction to reach the merits of the case. This Board must follow established precedent. We find that the claims contained in the Notice of Intent which are now before this Board have been supplemented and/or amended from their original form which makes them procedurally defective.

The assertions and/or claims made by Mr. Skiba are all in the form of broad and general question. Each one lacks specificity (dates, times, locations, employees involved, etc.) as to how it pertains to him. As the petitioner, Mr. Skiba has the burden to present relevant facts to the Carrier so that it may properly investigate and process the claims. It is not the Carrier's responsibility to wade through vague assertions to try to figure out the true nature of the claim.

Finally, this Board agrees with the Carrier's assertion that Mr. Skiba is attempting to pyramid multiple claims involving the same underlying incident. Based on arbitral precedent, the filing of duplicate claims covering the same subject is impermissible under the Railway Labor Act and cause for dismissal. In reviewing the record before us, we find that the many of the claims being alleged by Mr. Skiba stem from one or two situations.

The Board has carefully reviewed the voluminous record and for all the foregoing reasons finds that it lacks jurisdiction to make a final determination. Therefore, this claim must be dismissed in its entirety.

**AWARD**

Claim dismissed.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Petitioner(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of January 2021.