

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45322
Docket No. MW-47957
24-3-NRAB-00003-230399**

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

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

PARTIES TO DISPUTE: (

(Lake Superior and Ishpeming Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly failed to re-bulletin section foreman positions at Section #3 West Yard/Marquette and Section #5 Mines Foreman effective January 25, 2022 and continuing (System File C-17-22-010-01-L LSI).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Juntti and W. Owens shall now each be compensated:**
 - 1. The differential in pay between the Section Foreman’s rate of pay for all straight-time and overtime to which they were entitled and that which they were actually paid for all time worked beginning January 25, 2022, and continuing, until such time as the Section #3 and Section #5 Foreman positions are properly reestablished in accordance with the Agreement; and**
 - 2. The reimbursement of all additional automobile mileage expenses which Claimants may have incurred due to having to drive a further distance than they would have incurred in reporting to Section #3 and Section #5 Foreman positions, respectively.’ (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 controlling Agreement by failing to bulletin and establish three (3) section foreman positions, consolidating them into a single section foreman position, with the result that Claimants were assigned and working in positions offering lower rate compensation and/or fewer work opportunities, as well as requiring them to commute further to report to/from work, than prevailed when they were properly assigned to their previous section foreman positions. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because there is no merit to the Carrier's procedural claims, because the evidence proves that Carrier violated the Agreement, and because the requested remedy is appropriate under all of the relevant circumstances. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to present this claim within the Agreement time limit, because the claim alleges a violation relating to the abolishment of three foreman positions in January 2018, because a virtually identical claim already has been dismissed by the Third Division, because the Organization has not identified any occurrence that would amount to a timely cause of action in the instant claim, because the Organization has not met its burden of proof, and because there is no rule support for the claim in that the Carrier has the managerial right to determine the size and make-up of its workforce.

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

This Board has reviewed the record in this case, and we find that the Organization did not file its claim within the required period of time under the rules

and, therefore, this claim must be denied on procedural grounds. Article 24, Section 1(a), of the parties' Agreement states the following:

All claims or grievances must be presented in writing, by or on behalf of the employee involved, to the office of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based . . .

The claim in this case was filed on March 4, 2022, stating that the Carrier had failed to re-bulletin the two grieved Section Foreman positions that had been eliminated four years before on January 8, 2018. Obviously, that claim was much later than the required sixty days. Therefore, on procedural grounds, this Board has no choice other than to deny the claim.

The Organization states that the date of the occurrence was actually January 25, 2022, when the two grieved positions should have been bulletined and assigned when the permanent Eagle Mills Section Foreman position was vacated and readvertised. The position at Eagle Mills is not the same as the two positions that were eliminated at the mine or Marquette four years previously. Moreover, there was no continuing violation with a continuing liability.

It is fundamental that the Carrier has the right to determine the size and quality of its workforce. Apparently, the Carrier did just that in 2018. A claim was filed in that case, but it was not successful.

For all of the above reasons, this claim must be denied.

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 23rd day of September 2024.