

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1

Award No. 24261
Docket No. 43799
93-1-91-1-B-1885

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"The Organization asks that:

'...we ask that all reference to the incident under investigation be stricken from the claimant's record. We further ask that the claimant be fully compensated for any and all wages and benefits denied or lost, including time at the investigation, from the time he was suspended until he was allowed to return to work.'"

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant R. W. Haefner was employed by Carrier as an engineer. On January 25, 1990, the Claimant and Conductor were assigned to operate Carrier's train No. 46 from LaCrosse, Wisconsin to Chicago, Illinois. After the trip, the Claimant removed the data pack from the Pulse Event Recorder and signed for it. After the Carrier monitored the data, it was determined that the train may have exceeded the maximum authorized speed limits on several occasions during the trip. Consequently, the Carrier notified the Claimant and the Conductor to attend a formal Investigation scheduled for February 1, 1990.

The Claimant had contacted the Trainmaster before the Investigation to discuss a waiver of the Investigation if he admitted to speeding. However, the Conductor would not sign a waiver and, therefore, after two postponements, the Carrier held the Investigation on February 14, 1990. The Claimant was assessed a 30-day suspension effective March 1, 1990.

This Board has reviewed the procedural argument raised by the Carrier and we find that this Claim must be dismissed because it was not appealed in the appropriate fashion required by Rule 66, as amended.

On April 20, 1979, the parties entered into a memorandum of agreement which stated in Section (d):

"If claim is to be appealed, such must be submitted in writing by the Local Chairman to the Superintendent within 60 days from the date of receipt of notice of disallowance from the Carrier. Failing to comply with this provision the claim will be barred...."

The record reveals that the Claim in this case was appealed on March 22, 1990, by someone who was an employee of the Carrier and not the Local Chairman. The Claim was never appealed by the Local Chairman within the 60-day period. Consequently, this case must be dismissed on procedural grounds.

It should be noted for the record that despite the fact that we have not reached the merits of this case, the record reveals that the Claimant admitted that he was exceeding the speed at various locations on the date in question.

For the reasons set forth above, the claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of November 1993.