

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24694  
Docket Number MS-24585

George S. Roukis, Referee

(S. L. Framer

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of **Employee** that:

**\*A. The Carrier, in violation of the Clerk's agreement, Rule 12(d) improperly bypassed me for extra work in favor of a junior employee, although I was the senior extra man available for work and not working; and that the denial of my claim for said period (viz., 80 hours covering vacation on position 53030 at Austin, Minnesota, September 8, 1980, through September 19, 1980) was arbitrary, capricious, ad hoc, and without foundation.**

**B. The Carrier, in violation of the Clerk's agreement, Rule 12(d), improperly bypassed me for extra work in favor of a junior employee, although I was the senior extra man available for work and not working; that the denial of my claim for said period (viz, miscellaneous extra work at Austin, Minnesota, on November 10, 22, 24, 26, 27, 28 and 29, 1980, covering a total of 44 hours, 30 minutes straight time, and 11 hours, 20 minutes overtime) was arbitrary, capricious, ad hoc, and without foundation; and that the Carrier further was in violation of the Clerk's agreement, Rule 1(e), in that the work referred to in the preceding clause was assigned to a person not a member of the B.R.A.C. and who did not intend to join the B.R.A.C., and that the Carrier was knowledgeable of that fact.**

**C. As a result of these violations, Carrier shall now reimburse me for this lost work in the amount shown on my original claims, plus interest from the time that payment would have been made had the work in question been properly assigned.\***

OPINION OF BOARD: Claimant has charged Carrier with violating the controlling Agreement, specifically Rule 12(d) and (e) during the period, September 8, 1980 through November 29, 1980. Two separate claims were filed on November 4, 1980 and December 23, 1980, respectively, which were subsequently joined in an integrated petition. The latter petition was submitted to the Assistant Vice President of Labor Relations on January 6, 1981.

In defense of his petition, Claimant argues that Carrier violated the cited provision when it improperly bypassed him for extra work in favor of a junior employee who was neither more qualified for the extra work assignments nor a member of the Brotherhood of Railway and Airline Clerks. He asserts that Carrier was blatantly remiss when it ignored these pertinent factors. Moreover, he maintains that Carrier's averment that his present claim is procedurally defective is without substantive merit since Rule 36(b) which Carrier relies on for its denial is ambiguous. In essence, he contends that it would be procedurally unproductive if he had to notify the lower lever appeals official who initially denied his claim that he was rejecting that decision. In addition, he asserts that since he filed a notice of intent to file an ex parte submission with this Board, dated January 4, 1982, his petition is timely and properly before this Division.

Carrier contends that he was unqualified for the **Trainmaster's** Steno-Clerk position during the claimed dates of September 8, 1980 through September 19, 1980 and thus, it was justified in calling a qualified **junior** employee to handle the position. More importantly, it argues that his claim is invalid since he had not advised the designated appeals official within the sixty **(60)** day period required by Rule **36(b)** that he was rejecting this official's denial. It argues that he again violated this provision **when** he presented the integrated claim to the Assistant Vice President of Labor Relations without waiting for the appropriately designated lower level appeals official to respond to his **December 23, 1980** claim. It further maintains that he violated the time limits for progressing an appeal to this Hoard, notwithstanding the fact that both the Carrier and the Brotherhood of Railway and Airline Clerks Organization granted him an extension of thirty **(30)** days in addition to the required nine **(9)** months to file an **ex parte** submission. It avers that he had ten **(10)** months tolling from March 5, 1981 to institute Adjustment Board proceedings.

In considering this case, the Board is compelled to **dismiss Claimant's** petition. Rule 36(c) of the applicable collective Agreement mandates that claims will be barred unless within nine **(9)** months of the highest designated official's rejection, the affected employee or his duly authorized representative institutes Hoard proceedings. Claimant was granted an additional thirty **(30)** days from March 5, 1981 to file his appeal. His appeals limitation **ran** to January 5, 1982. Certainly one could not argue that he **was not provided** ample time to comply with this requirement **or** that he was unmindful of this constraint. He was obligated to institute proceedings by January 5, 1982. Since this **Board** did not receive his submission until February 3, 1982, **which was** well beyond the deadline date, the Board must dismiss his petition. We **would do** violence to the appellate process **in** this industry if we disregarded our procedural standards and decided each exception to the required time limits **de novo**. It would be contrary to the manifest intent of the Railway Labor **Act** and it would wreck havoc upon the industry's industrial relations system. Claimant was actually afforded ten **(10)** months within which to institute proceedings properly with this Hoard and he failed to do so. His letter dated January 4, 1982 expressing an intent to file a submission does not technically **de facto** change his untimely appeals and we **c-t** by judicial determination **rectify** his inaction. We will dismiss the claim.

FINDINGS: The Third Division of the Adjustment Hoard, upon the whole record and all **the** evidence, **finds** and holds:

That the **parties waived** oral hearing;

That the Carrier and the Hmployes involved in this dispute are respectively Carrier **and** Hmployes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has **jurisdiction over** the dispute involved herein; and

That the claim is barred.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
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Nancy J. Beven - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984