

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29572  
Docket No. MS-29904  
93-3-91-3-243

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Robert E. Stipek  
(Chicago and North Western  
(Transportation Company

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board of my intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between Robert E. Stipek and the Chicago Northwestern Railroad.

It is my opinion, that the Chicago Northwestern Railroad is in gross negligence of our agreement for the following reasons.

- 1) Where does it state in the agreement that it is the supervisors discretion to use employees with less seniority and less experience working at the interlocking tower.
- 2) Although the company states that there was no planned overtime, Mr. Carrol's work reports indicate that in fact all his overtime was planned.
- 3) On the days in question , I was the senior member of the crew yet was never asked to work the overtime. What's the point of having a seniority roster?
- 4) It is my opinion that the company did indeed violate 15D and 15B of the agreement. For this reason I am filing this claim against Chicago Northwestern Railroad.
- 5) Mr. Carrol's work reports indicates that the actual overtime was 55 hours and not 46 hours."

FINDINGS:

The Third 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 were given due notice of hearing thereon.

Claimant, Robert E. Stipek, was employed as a lead signalman on Deval Crew #77 located at Des Plaines, Illinois. On November 6, 1989, the District Signal Foreman split this Crew #77 and sent two members thereof to perform signalman's work at Mayfair Tower, a location approximately 15 miles from Deval. Claimant remained with the Deval group and performed signalman's work as assigned with the portion of the crew which remained at Deval. The split portion of the crew which had been sent to Mayfair worked at that location until November 21, 1989. During that period they performed varying amounts of overtime work. Because Claimant was senior as a signalman to the employees who were split from the Deval crew, he, on December 6, 1989, initiated a penalty claim requesting payment of the number of hours of overtime work performed by the employees at Mayfair alleging a violation of Rules 15(b) and 15(d) of the rules agreement.

This penalty claim was progressed on Claimant's behalf by the representative Organization through the normal on-property grievance procedures and was ultimately denied by Carrier's highest appeals officer on June 26, 1990. Claimant subsequently initiated his request to this Board for consideration of this dispute by letter dated April 17, 1991.

The agreement rules which are applicable in this case are 15(d) and 52(a)3.

We will first address the applicability of Rule 52(a)3 to this dispute. That rule deals with Time Limits which must be observed by all parties to a dispute. It specifically requires that:

"- - -All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act."

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Claimant was apprised of this requirement by his representative Organization by a letter dated January 31, 1991.

In this case, the highest designated officer of the Carrier denied the claim on June 26, 1990. The claim was not instituted with this Board until April 17, 1991, which exceeds the nine month period allowed by Rule 52(a)3. Therefore, this claim is barred and must be dismissed for that reason.

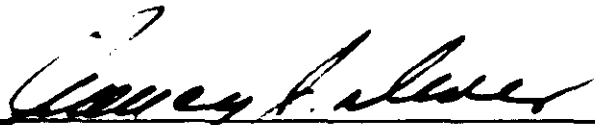
If this Board had been able to reach the merits of the claim, it would have been denied under the specific provisions contained in the language of Rule 15(d) and the explicitly detailed EXAMPLE which accompanies Rule 15(d).

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.