

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29862
Docket No. MS-30079
93-3-91-3-522

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Andrew Y. Fuller
(
(CSX Transportation, Inc. (former Louisville
(& Nashville Railroad Company)

STATEMENT OF CLAIM:

"The purpose of this letter is to serve notice, as required by the rules of the N.R.A.B., of my intention to file an Ex Parte Submission within 30 days. The Submission will cover an un adjusted dispute between myself (A.Y. Fuller) and CSX Transportation (formerly L&N R.R. and hereafter referred to as the Carrier). The dispute is the discipline rendered (10 days overhead suspension) as well as the Carrier's handling of the investigation. in particular:

- 1) the Carrier's capricious and selective enforcement of their rules.
- 2) the lack of a fair hearing to myself due to:
 - a) bias demonstrated by the investigating officer,
 - b) denying me the opportunity to question a witness,
 - c) withholding important and relevant evidence at the investigation."

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 waived right of appearance at hearing thereon.

On Friday, March 2, 1990, Claimant, a Signal Maintainer, was assisting Signal Maintainer Price searching for code line problems on the trackage between South Smyrna and Gilstrap, Georgia. Price was operating the hi-rail vehicle, and Claimant was the lone passenger. Subsequent to obtaining permit authority from the Dispatcher to occupy the trackage, Price discussed his planned movement with Tie Gang Foreman Walls who was supervising several BMW employees installing ties in the general area.

Price then proceeded to drive backwards for approximately two miles. Near the South Smyrna crossing BMW employee Machine Operator Hammond was installing ties on the track. Neither Price nor Claimant noticed the BMW employee and they backed over him with the hi-rail vehicle. Hammond was unconscious for a brief period of time. Upon regaining consciousness he was transported to a nearby medical facility where it was determined that he had sustained minor injuries to his hip and thumb.

As a result of this incident, Price and Claimant were charged, "for responsibility, if any," in connection with the incident. From evidence adduced at an April 17, 1990 Hearing, it was found that both Price and Claimant were "guilty as charged for violating Carrier's Safety Rule 182" which reads as follows: "Mechanized equipment operators must keep a constant lookout in the direction being traveled." Price and the Claimant were assessed a ten day overhead suspension over a six month period.

On June 12, 1990, the Organization appealed the decision on behalf of both Price and the Claimant. Carrier denied the claim and no further appeal was taken by the Claimant until August 27, 1991, some 14 months after Carrier's declination of the claim. At that time, Claimant submitted the issue to the Board for adjudication. According to Rule 54(c):

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine months from the date of said officer's decision proceedings as instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board...."

Clearly, Claimant's appeal dated August 27, 1991 extended well beyond the nine month limit as called for by Rule 54 (c) and is barred by the forfeiture language of that Rule. Thus, this Board is without recourse except to dismiss the appeal due to lack of jurisdiction to address the merits of this claim. See Third Division Awards 28194, 28043, 26948, 22133 and 22075.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 26th day of October 1993.