

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 29871
Docket No. MS-30614
93-3-92-3-391

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (F. R. VanDenburgh
(
(Delaware & Hudson Railway Company

STATEMENT OF CLAIM:

"REINSTATEMENT OF PRIOR RIGHT THIRD SUB-DIVISION DESIGNATION ON ROSTER DATED OCTOBER 24, 1990 POSTED BY D&H CORPORATION AND SUBSEQUENTLY DELETED BY CARRIER WITH POSTING OF JANUARY 1, 1991 ROSTER, ALSO CLAIM FOR ALLSTRAIGHT TIME AND OVERTIME EARNINGS OF INCUMBENT OF GENERAL CLERK NO. 49, IN ADDITION TO EARNINGS OF CLAIMANTS CURRENT POSITION, DUE TO CARRIERS FAILURE TO ALLOW CLAIMANT THE POSITION HIS SENORITY WOULD ENTITLLE HIM TO HOLD, IN VIOLATION OF EXISTING LAW AND COLLECTIVE AGREEMENTS." (sic)

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.

The Claim that Petitioner brings to this Board was denied by Carrier's General Manager Operations and Maintenance by letter dated May 31, 1991. Petitioner did not bring this denial to the Board until April 14, 1992. Rule 28-2 of the Agreement requires that appeals to this Board be instituted within nine months of the date of the General Manager's denial. Failure of Petitioner to lodge an appeal within that time denies the Board jurisdiction and precludes consideration of the merits of the Claim or an allegation that Carrier had earlier defaulted on time limits.

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The Board has no alternative, but to dismiss the Claim because it was not timely appealed, as required by Rule 28-2.

The Board does note, however, that if the merits were addressed, Petitioner has not met his burden of proof as the Carrier did not violate the Agreement.

A W A R D

Claim dismissed.

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.