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**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25270

Docket No. 44932

01-1-00-1-N-2257

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Locomotive Engineers

**PARTIES TO DISPUTE:** (

(Northeast Illinois Commuter Railroad Corporation (Metra)

**STATEMENT OF CLAIM:**

“Claims filed on behalf of Trainman (former Engineer) W. D. Blaser, beginning February 11, 1998 and continuing through June 19, 1998, for the earnings of Assignment No. 24 for each day claimed account wrongfully denied the right to exercise seniority to that assignment in violation of the applicable seniority provisions of the BLE & UTU Schedule Agreements.”

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

At the time of the incident that gave rise to this case, William D. Blaser, Claimant, was employed by the Carrier as an Engineer. On April 16, 1997, while operating a scheduled commuter run, the Claimant operated his train at excessive speed through a work area protected by a 30-mile per hour speed limit. The Claimant was charged for this infraction.

The Claimant waived his right to an Investigation and Hearing. He was issued a 60-day Suspension and his Engineer Certification was revoked for one year. After two unsuccessful attempts through remedial training to re-certify as an Engineer, the Claimant was offered employment in train service on February 12, 1998, under restricted seniority provisions. The Claimant had originally progressed from train service to engine service, so his train service seniority was protected under Rule 58 of the UTU Agreement.

On February 11, 1998, he began filing daily claims account not being able to fill train service positions. All of these initial claims were denied. Considerable discussion of the situation took place while claims on behalf of Mr. Blaser were being processed through the grievance procedure. On June 9, 1998, the Organization hand delivered an appeal letter protesting the denial of Mr. Blaser's claims.

On June 20, 1998, the Carrier permitted the Claimant to exercise his train service seniority and all claims arising from the previous conditions ceased. On September 22, 1998, the Superintendent of the Rock Island District responded to the Organization's Letter of Appeal. From this point on, the Organization took the position that the Carrier's response to the June 9 appeal letter was untimely. It was well beyond the 60-days required by Agreement.

The claim before the Board is for pay from February 11, 1998, through June 19, 1998, for work the Claimant was denied in train service. The Carrier in this instance argues that it was in a "catch 22" situation. It received claims from the UTU for placing the Claimant in train service and it received claims from the BIE for not doing so. The dispute arose over the conflicting interpretation of Rule 58(c) of the UTU Agreement:

**"RULE 58 (c)**

(c) An employee who has established NIRC seniority as Conductor, Assistant Conductor and Collector who is selected for engine service shall retain his seniority standing and all other rights in commuter passenger and miscellaneous commuter service. However, such employee shall be permitted to exercise such rights only in the event he or she is unable to hold any position or assignment in engine service."

At the time of the issue involved here, the UTU took the position that an Engineer could only exercise his or her seniority in train service by lay-off and could not hold an engine service position. No other reason for not being able to hold an Engineer's job would enable an Engineer to go back to train service.

The BLE took the position that Rule 58 speaks for itself. It makes no exception. It states that if you cannot hold a position in engine service, you can exercise your train service seniority. While there was considerable controversy between the Carrier, the UTU, and the BLE over the issue and some accommodation seemed to have been reached between the parties, at this point, the Board is only concerned with the claim made by Engineer Blaser and the contentions of the BLE and the Carrier in regard to the instant issue.

On at least two occasions, the Board has reviewed the record of this case. The most recent material presented to the Board included a letter to the First Division wherein the current UTU General Chairman representing Carrier Trainmen stated that the Rules relied on by the BLE in this case support the claim. This is contrary to the position taken by the previous General Chairman who successfully processed claims against the Carrier because Blaser and others were allowed to go back in train service. As a result of the lengthy review of this case, the Board has concluded as follows:

The major arguments of this case involve the time limit issue and the meaning of Rule 58(c). The Board has also concluded that it has authority to render a decision on the meaning of a UTU Contract clause in this instance.

As in First Division Award 25271 recently decided by the Board, we will decide this case on the time-limit issue and briefly comment on the merits.

The Board has concluded that by the Carrier failing to respond within 60 days to the Organization's June 9, 1998, Letter of Appeal, it has forfeited its right to protest the claim and it must be allowed.

The Board would also like to state that if the claim were decided on the merits, at the time of the incident at issue here, a sustaining Award would also have been issued.

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**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of First Division**

Dated at Chicago, Illinois, this 18th day of October, 2001.