

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12517
Docket No. 12250
93-2-91-2-86

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

PARTIES TO DISPUTE: (International Brotherhood of
(Electrical Workers
(Chicago South Shore and
(South Bend Railroad

STATEMENT OF CLAIM:

"1. That the Chicago South Shore and South Bend Railroad, violated Rule 27(a) of the controlling agreement, revised April 1, 1974, as amended, when said railroad failed to timely notify Electrician Ronald Prosser and further violated said rule when it failed to supply sufficient reasons for disallowance of his claim for four (4) hours at the overtime rate of pay on March 24, 1990.

2. Therefore, account of Carrier's violations of Rule 27(a) in accordance with Rule 27(a) of the agreement Claimant's claim should be allowed as presented.

3. In addition, the Carrier further violated the controlling agreement, in particular Rule 24, failed to allow Electrician Ronald Prosser to perform electricians' work as he claimed on March 24, 1990.

4. Therefore, the claim of Electrician Ronald Prosser should also be allowed on its merits and Claimant be paid four (4) hours at the overtime rate for Carrier's violations of the current agreement revised April 1, 1974, as amended."

FINDINGS:

The Second 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.

Carrier, in reorganization under Chapter 11 of Federal Bankruptcy Laws, sold all of its passenger service rights to the Northern Indiana Commuter Transportation District (NICTD). It continued, however, to operate freight service over the lines acquired by NICTD. Following the change over, Carrier's locomotive maintenance work was contracted to NICTD, which employs, among others, members of the Electricians' Craft, Claimant being one. On Saturday, March 24, 1990, mechanical employees, employed by Carrier, replaced a circulating pump on a locomotive. On April 17, 1990, Carrier received a Mechanical Department Time Report - Overtime Pay indicating that Claimant was seeking four hours overtime pay, under Rule 24, for March 24, 1990, because the circulating pump was changed on Locomotive 2003. The back of the time report noted that it had been received by Carrier's Mechanical Superintendent from the IBEW Local Chairman.

On April 25, 1990, the Local Chairman was advised that the Claim was denied. The basis for the denial was that Rule 43, cited in the denial, allowed the performance of incidental work at running repair work locations.

On June 19, 1990, the Organization filed exceptions to the denial. First, it maintained that Carrier offered insufficient reasons for the denial. Also, it contended that Carrier was obligated to notify the Claimant within sixty days that his Claim was denied. The Organization argued that Carrier was required to timely notify whoever filed the claim of its disallowance. When claims are filed by an individual, Carrier is not privileged to respond directly to the Local Chairman, it was suggested.

The dispute was appealed to this Board on both the time limits issue and the merits. Carrier defends before this Board on both issues and raises a third issue - Claimant is not employed by Carrier; thus this Board is without jurisdiction to consider his Claim. The Organization challenges this jurisdictional issue on the grounds that it was not advanced before appeal to the Board.

While this Claim will be dismissed because the Board lacks jurisdiction to consider claims of non-employees against a Carrier concerning matters which arose at a time when the individual was not actually employed by Carrier, the Board must first comment on the parties' arguments concerning the application of the time limit Rule of the Agreement between Carrier and the Organization. The language of Rule 27(a) specifically requires Carrier to notify "whoever filed the claim or grievance" of the reasons for disallowance within sixty days of the date the claim or grievance was filed. Claims that have been filed by an individual claimant, without involvement of an Organization Representative, must be answered directly to the individual. In such circumstances an answer to the Organization Representative, bypassing the Claimant, is not sufficient under the literal application of the language of the Rule.

This record, though, clearly indicates that it was the Local Chairman who delivered the time report to Carrier's Mechanical Superintendent. This event was noted on the back of the report when it was received by the Superintendent. The act of personal delivery by the Local Chairman was, in these circumstances, the act of filing. Accordingly, Carrier properly responded to "whoever filed the claim" when it sent its denial to the Local Chairman. Moreover, if the denial was imperfect, and the Local Chairman was of the opinion that it was improperly addressed to him, he nonetheless possessed some obligation to notify the sender of his mistake within a reasonable time so that the matter could be corrected. This Board looks with disfavor upon "winning by ambush" no matter which party seeks the advantage.

With regard to the jurisdictional issue, even though the Organization argues that it comes late, this Board has uniformly held, on all Divisions, that issues of jurisdiction may be raised at any time. In this regard see Second Division Award 6003, involving the same parties before the Board here. Therein, the Board stated:

"Once this Division is put on notice that the matter is outside its province it must proceed on its own motion to dismiss the claim for want of jurisdiction. This is the proper course, even though the parties themselves have not raised this point on the property."

See also Third Division Awards 27575 and 20165 and the Awards cited therein.

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The record is clear that Claimant was not an employee of Carrier at the time it changed out a circulating pump on Locomotive 2003. Accordingly, he is without standing to file a claim against Carrier for this work and this Board is without jurisdiction to consider any complaint he may have against this Carrier.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1993.