NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23946
Docket Number CL-24195

George S. Roukis, *Referee*

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Staten Island Rapid Transit Operating Authority

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9454) that:

1. The Carrier violates the established practice and rules of the Brotherhood, when they changed the hours of position No. *81-A-209 Voucher Statistical* Clerk and added one-half hour work per day to the whole schedule, without compensation.

2. *The* Carrier will pay Clerk D. DeSaro, one-half hour pay per day, at the punitive rate, commencing August 10, 1979 and continuing until such time as the violation is corrected.

OPINION OF BOARD: On July 27, 1979 Carrier had bulletined the position of Voucher-Statistical Clerk with assigned hours of work between 8:30 A.M. - 12:00 noon ad 12:30 P.M. - 5:00 P.M. Saturdays and Sundays were rest days. Previously the assigned hours of work for this position were between 8:45 A.M. - 12:30 P.M. and 1:15 P.M. - 5:00 P.M. Since no bids were received for this position, Carrier filled it with a new hire, Ms. D. DeSaro, who subsequently filed a claim on September 17, 1979 averring that the Agreement was violated, particularly Rules 2 and 4 thereof, when the position's hours of work were changed by Carrier. Rule 2, which is pertinent to this dispute, is referenced as follows:

DAY'S WORK

"Except as otherwise provided in Rules 6 and 8, eight (8) consecutive hours work or less, exclusive of the meal period, shall constitute a day's work for which eight (8) hours will be paid."

By letter dated November 16, 1979, Carrier denied the claim stating that its actions comported with all the applicable rules of the Agreement and its decision was appealed by the General Chairman on January 8, 1980. The appeal was then heard by General Superintendent, Mr. E. A. Duszak, on February 13, 1980 but the Organization contends *that* Carrier never responded to this *appeal* until June 12, 1980, well beyond the 60 days time limit required by Rule 48. *The* Organization argues that the claim should be allowed consistent with the manifest intent of Rule 48 and the decisional law of this Division, since Carrier's letter was untimely and procedurally defective.

carrier contends that it timely responded to the February 13, 1980 appeal as evidenced by its March 19, 1980 denial letter but the Organization asserts that it did not receive this letter until June 16, 1980 when it received Carrier's Juue 12, 1980 denial letter. The Organization argues that Carrier did not respond to the February 13, 1980 letter until it was reminded by the Organization on two occasions, specifically, April 28, 1980 and June 12, 1980 that it failed to deny the claim in timely fashion. Moreover, the Organiration contends that the March 19, 1980 letter was unsigned and not written by the appeals hearing officer, who heard the February 13, 1980 appeal.

Carrier avers that it complied with the Agreement and bulletined the position in accordance with its *rights under* Rule 2 and notes that it was not estopped from effectuating this reversion. It argues that the Organization cannot cite a basic day or basic week rule that would support its argumentative contentions or rely upon Rule 4 (overtime) without calling attention to a contradictory rule.

In our review of this case, we agree with Carrier's position on the substantive issue of this dispute, namely, that it had the right to change the position's hours of work as long as it complied with the hours of work requirements of Rule 2. The change effectuated herein did not exceed the 8 hours limit of Rule 2 and was within Carrier's contractual prerogative. We do find, however, that Carrier violated Rule 48, when it failed to respond within 60 days to the Organization's February 13, 1980 appeal and it was not corrected by the dubious unsigned letter of March 19, 1980. The record shows that the Organization notified Carrier on April 28, 1980 that it failed to respond to the February 13, 1980 appeal and we believe Carrier was at least obligated to respoud to this inquiry. Waiting until it was again apprised on June 12, 1980 that it failed to answer the February 13, 1980 appeal does not lend credibility to the March 19, 1980 document. We will award Claimant one half (&hours overtime for each day between August 10, 1979 and June 12, 1980 because Carrier did not timely deny the letter of appeal, but we will deny the claim in all other respects.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this disputeare respectively Carrier and Employes within the meaning of the Railway labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A U A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1982.