

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of J. D. Baird for 7 hours at the Assistant Inspector rate of pay for the following days March 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22 and 25, 1985, account of Carrier violated the current Signalmen's Agreement, particularly, APPENDIX 'P,' paragraphs 8 and 10, when it filled the Trouble Desk position with non-seniority district No. 15 employees." Carrier file SD-2240

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 employees involved in this dispute are respectively carrier and employes 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.

This Claim concerns work allegedly performed on the Trouble Desk position, regularly assigned to Seniority District No. 15 employees, by employees from another seniority district. There is, however, a procedural consideration which precludes the Board from reviewing the dispute on its merits.

The Claim was initiated on April 23, 1985, and denied in timely fashion by the Supervisor on June 10, 1985. It was then progressed to the Manager, Labor Relations on July 16, 1985, and denied by him on September 6, 1985, also within the time limits.

On September 22, 1985, the Local Chairman requested a "conference" in the matter with the Manager, Labor Relations, a step not required in the Claims handling process. This was granted, and on October 22, 1986, the

Manager-Labor Relations wrote, in relation to this and other claims, "since our position remains the same, our original denials will stand for the same reasons as contained therein."

The matter was then referred to the Senior Director-Labor Relations on November 22, 1985. The Senior Director-Labor Relations replied on January 16, 1986, denying the Claim but also stating that his reply was "without waiving our position relative to any technical aspect."

It is the Carrier's position that the Claim was not progressed properly under the provisions of Rule 4-K-1 (c), which reads in pertinent part as follows:

"(c) A grievance or claim denied in accordance with paragraph (b) shall be considered closed unless it is listed with the Senior Director-Labor Relations by the employee or his union representative within sixty (60) days after the date it was denied. A grievance or claim will be discussed on a mutually agreed upon date. . . ."

The Carrier notes that it was more than 60 days from September 6, 1985, when the Claim was denied at the step below, to November 22, 1985, when it was appealed to the Senior Director-Labor Relations. There is no record of any request by the Organization for extension of time, nor is there any basis to determine that the intervening conference with the Manager-Labor Relations tolled the 60-day period.

The Organization argues that the time limit argument must be disregarded, since, in its view, it was not raised on the property. The Carrier, on the other hand, asserts that such was discussed at the meeting with the Senior Director-Labor Relations. The Board cannot resolve, of course, whether such discussion occurred. The Carrier's written response thereafter does, however, refer to the non-waiver of "any technical aspect", and it is at least arguably the case that this referred to the tardy appeal.

The Board must reach a conclusion similar to that in Third Division Award 27640, involving the same parties, where non-compliance with time limits dictated a sustaining award. In this instance, the parties have agreed that a Claim "shall be considered closed" in the event it is not appealed in timely fashion. The Board is without authority to ignore this clear direction.

A W A R D

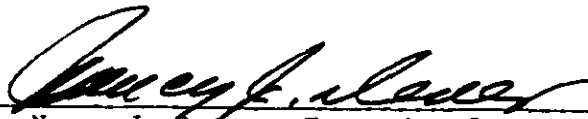
Claim dismissed.

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Award No. 27641
Docket No. SG-27433
88-3-86-3-682

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.