

Form 1

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(National Railroad Passenger Corporation
(AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10872)
that:

Amtrak File No. NEC-TCU-SD-990

- (1) Clerk forklift #A44842 should be taken out of service and properly repaired or replaced.
- (2) Clerk forklift #A44843 should be taken out of service and properly repaired or replaced.
- (3) Taylor-Dunn electric jitney #40501 should be taken out of service and properly repaired or replaced.
- (4) Electric charger for Taylor-Dunn jitney should be stored in a heated, vented, lighted, and secure building and not left outside with no covered to the weather and/or unauthorized people.
- (5) Storage of said equipment (forklifts and jitneys) should be in heated, vented, lighted and secure building and not left outside or in the unheated, unprotected postal area under lease by Amtrak.
- (6) Blue four-wheeled trucks now in use, need solid hook up arms with securing device for the upright position and solid tires to ease the turning and sideward movement of said trucks.

- (7) Hooks to pull U.S. Mail containers need to be replaced and periodically repaired and/or replaced as needed.
- (8) Where tar and cement meet on the trucking lane near Dumpsters on track #11, should be permanently repaired or rebuilt.
- (9) Baggage cars in the series #S of 1400 and 1500 need to have doors greased, and be cleaned and maintained on a regular basis. We need work and repair records inside each car to be available for inspection as to dates, time, and places of repairs and maintenance. This includes all cars in these series.
- (10) Baggage cars in the series #S 1000, 1100, 1200, and 1300 need to be repaired i.e., doors put back on runners and secured, door locks inside and out be repaired and replaced, holes and loose boards in floors repaired, metal strips that need to be reported and replaced, Grab bars for all doors inside and out to safely open and close doors should be installed. Each car should have repair records in the car to be available for inspection as to dates, times and places of repairs and maintenance. This includes all cars in these series.
- (11) When baggage cars are in service yard, they should be swept and cleared of any debris, snow and grease on floors should be cleaned up. All company material not pertaining to baggage and mail is to be removed before leaving yard.

Therefore, claim is made on behalf of:

<u>EMPLOYEE</u>	<u>JOB SYMBOL</u>	<u>REST DAYS</u>	<u>RATE OF PAY</u>
Mark Gorham	BG-803	Sat. & Sun.	\$95.93
John Sweeney	BC-811	Sat. & Sun.	\$95.45
John Shea	BG-806	Fri. & Sat.	\$90.98
Robert Conti	BG-807	Sun. & Mon.	\$90.98
Thomas Shay	BG-818	Fri. & Sat.	\$89.97
Thomas Lee	BG-821	Thr. & Fri.	\$89.97
Richard Foley	BG-822	Sat. & Sun.	\$89.97
John Laselva	BG-824	Tue. & Wed.	\$91.44 (T&F)
			\$89.97 (S)
			\$90.98 (S&M)

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Serial No. 360

INTERPRETATION NO. 2 TO AWARD NO. 30476

DOCKET NO. CL-30918

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(
(National Railroad Passenger Corporation
((AMTRAK)

This matter has been returned to the Board, on the request of the Organization, for another Interpretation. The Board has reviewed the written arguments and heard oral presentations of the parties. We note that the Award that was rendered by this Board on September 13, 1994 sustained the claim which was progressed to the Board solely on the time limit issue.

As noted in the September 1, 1995 Interpretation No. 1 to this Award, we noted that the claim was sustained for the period of December 26, 1989 at eight hours per day for each Claimant at the punitive rate through June 12, 1990, the date of Carrier's second level denial.

In the September 13, 1994 Award in this case, we noted that, once the organization presented the dispute in the form of a claim and cited a provision of the Agreement dealing with safety:

"In our view, it was incumbent upon the Carrier to reply to the claims setting forth its various defenses, rather than ignoring the claim and presenting those defenses at a later time. The Carrier violated its time limit obligation when it failed to reply to the claim."

When it became necessary to consider a request for Interpretation No. 1, we limited the sustaining Award to the period of time up to the Carrier's second level denial. But, at no time did the Carrier attempt to argue the position now presented for interpretation.

Whether or not an Award such as the one issued in this dispute is or is not punitive, and whether or not such Award should or should not be made, are matters which should have been raised and argued prior to the first Interpretation.

Interpretation No. 2
to Award No. 30476
Docket No. CL-30918

On September 13, 1994, we sustained the claim for eight hours at the punitive rate. No reference was made to a set-off.

In Interpretation No. 1, we limited the chronological time span of the sustained claim and, again, no question of set-off was mentioned.

The Carrier chose not to respond to the initial claim in a timely manner which has resulted in sustaining of the claim as presented. It is too late for the Carrier to argue, at this point, that there should be set-offs. The Organization's contention is accepted as being accurate and controlling in this dispute.

Referee Joseph A. Sickles who sat with the Division as a member when Award 30476 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of June 1996.

<u>EMPLOYEE</u>	<u>JOB SYMBOL</u>	<u>REST DAYS</u>	<u>RATE OF PAY</u>
Joseph O'Connell	BG-825	Thr. & Fri.	\$90.98 (S-T)
			\$89.97 (W)
Robert Pugsley	BG-829	Sun. & Mon.	\$91.44
William Dorman	BG-828	Wed. & Thr.	\$90.98 (F&S)
			\$91.44 (S&M)
			\$89.97 (T)
William Kent	BG-830	Tue. & Wed.	\$89.97
Gerard Etro	BG-831	Mon. & Tue.	\$89.97
Steve Kostopoulos	BG-832	Wed. & Thr.	\$89.97
James Ahern	BG-833	Sat. & Sun.	\$90.98
Gaspar Terranova	BG-834	Mon. & Tue.	\$90.98

for 8 hours pay at the punitive rate commencing 60 days prior to this claim dated 2/24/90 and continuing for each and every work day thereafter, as a penalty, until these violations are fully corrected."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

The instant dispute is presented to the Board solely on the basis of an asserted violation of the time limits.

An initial claim was filed on February 24, 1990 listing 11 distinct safety matters at South Station, Boston.

There was not a timely reply to the claim and the Carrier has taken the position that the issues addressed by the Organization are not in the proper forum, since the matters raised were safety issues.

The February 24, 1990 claim set forth various items concerning hazardous conditions and cited Rules 8-C-1 and 8-F-1.

Rule 8-C-1 states that the health and safety of employees shall be protected and sets forth certain requirements.

We make no determination as to whether or not the merits of the "claim" were properly established, but the Organization presented the dispute in the form of a claim and cited a provision of the Agreement dealing with safety. In our view, it was incumbent upon the Carrier to reply to the claim setting forth its various defenses, rather than ignoring the claim and presenting those defenses at a later time. The Carrier violated its time limit obligations when it failed to reply to the claim.

A W A R D

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 Third Division

Dated at Chicago, Illinois this 13th day of September, 1994