

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30885  
Docket No. CL-30982  
95-3-92-3-941

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Transportation Communications  
( International Union  
PARTIES TO DISPUTE: (  
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the TCU  
(GL-10902) that:

The following claim is hereby presented to the company in behalf of the following clerks working in the CATS Department; R. Wescott, #31 Cust. Service Clerk; H. Mendelson, #32 Cust. Service Clerk; S. McIntyre, #33 Cust. Service Clerk; R. O'Donnell, #34 Cust. Service Clerk; L. Kerwood, #35 Cust. Service Clerk; B. McManus, #36 Cust. Service Clerk (Rel); D. Cross, #37 Cats Clerk; M. Krage, #38 General Clerk - Car Accounting; P. Charpentier, #39 Car Dis. Clerk.

(a) The Carrier violated the Rules Agreement effective September 24, 1990, particularly Rules 1, 5, 13, and other rules, when the D&H Corporation transferred clerical duties including, but not limited to, the inputting of demurrage and miscellaneous billing, inputting of customer collections and mailing of customer freight bills from the CATS Department located at the D&H Corporation headquarters, Clifton Park, New York, to CP Rail, Montreal Customer Credit and Accounts Center (CCAC), Montreal, Quebec, Canada, effective on or about May 27, 1991.

(b) That Claimants R. Wescott, H. Mendelson, S. McIntyre, R. O'Donnell, L. Kerwood, B. McManus, D. Cross, M. Krage and P. Charpentier now be allowed eight (8) hours punitive pay per day based on the appropriate pro rata rate commencing May 27, 1991, and continuing for each and every work day thereon after until this violation is corrected.

(c) That the successor incumbents, if any, to the above positions be considered as claimants of this claim and be compensated in a like manner.

(d) This claim has been presented in accordance with Rule 28-2."

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 Organization contends that Carrier violated Rule 28-2 of the Agreement when it failed to respond to the claim in a timely manner. In its view, the claim should be allowed on the basis of this 60 day time limit violation.

Carrier argues that it did not violate Rule 28-2 of the Agreement. It asserts that the reply to the claim was handled in the customary manner on the property within the time frame provided in the Agreement.

We conclude that the Organization is correct in its assertion that a response to a claim is due within 60 days, as required by the Agreement. While it is clear from the March 9, 1992 letter from General Chairman H.W. Randolph to General Manager T.F. Waver that there were ongoing discussions, this does not obviate the requirement to respond in a timely fashion. After all, the Organization was still waiting for a response to its claim. Therefore, Claimants are entitled to payment from March 9 to April 7, 1992 (the date of Waver's response to Randolph). However, once denied, payment for violation of time limits cannot be awarded. Therefore, the penalty must be limited to this period of time.

Accordingly, and for the foregoing reasons, the claim is sustained on procedural grounds alone. We find that the claim is without basis on the merits.

AWARD

Claim sustained in accordance with the Findings.

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O R D E R

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 10th day of May 1995.