

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30887
Docket No. CL-30996
95-3-92-3-691

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-10909) that:

I. The following claim is hereby presented to the Company in behalf of Claimant, J. Markley (861-91-DH026) that:

(a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 12, 15, 44 and other Rules, when it disqualified Claimant Markley, effective March 8, 1991, from clerical position symbol #48, based on his allegedly not being able to perform a specified number of invoices on a daily basis. The Carrier actions were improper due to the fact that they do not have a piece meal or tonnage type of agreement with this Organization, to allocate work to its clerical employees; and they failed to comply with the previous agreement with this Committee to allow Claimant Markley until March 11, 1991 to qualify for this position.

(b) Claimant Markley now be allowed eight (8) hours pay based on the pro-rata hourly rate of \$13.24 per day, commencing March 9, 1991 and continuing for each and every work day thereafter, on account of this violation.

(c) That in order to terminate this claim, Claimant Markley must be allowed to return to the involved position and must be provided with the Carrier's full cooperation in his effort to qualify for same. Further, the Carrier must remove the piece meal or tonnage type of standards which they established on the involved position or any other positions with similar standards, unless otherwise agreed to by this Organization.

(d) This claim has been presented in accordance with Rule 28-2 and should be allowed.

II. Claim of the System Committee of the TCU that:

The following claim is hereby presented to the Company in behalf of Claimant J. Markley (861-92-DH001)

(a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 12, 15 and other rules, when they disqualified Claimant Markley, effective September 30, 1991, from clerical position of Customer Service Clerk, Symbol #32, at a rate of pay \$13.64 per hour, located at D&H Corporate Headquarters, Clifton Park, New York.

(b) The Carrier has failed to comply with the requirement that they must provide, in writing, the employee and Division Chairman the reason for disqualification.

(c) Claimant Markley now be allowed eight (8) hours pay based on the pro-rata hourly rate of \$13.64 per day, commencing September 30, 1991 and continuing for each and every day thereafter, on account of this violation.

(d) That in order to terminate this claim, Claimant Markley must be allowed to return to the involved position and he must be provided with the Carrier's full cooperation in his efforts to qualify for same.

(e) This Claim has been presented in accordance with Rule 28-2 and should be allowed."

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 claims 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 excuse regarding in a timely manner. After all, the Organization was still waiting for a response to its claims. Therefore, Claimant is 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 claims are sustained on procedural grounds alone to the extent indicated.

As to the substance of the claims, they are without merit. We find that the Organization has not met its burden 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.