

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30890
Docket No. CL-31001
95-3-92-3-950

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
Organization (GL-10906) that:

I. The following claim is hereby presented to the
Company in behalf of Claimant Kyle Gregoire
(861-91-DH031).

I claim one day's pay, at pro rata rate, for each and
every day the Rouses Point, NY, Yardmaster has performed
clerical duties, which were previously and exclusively
performed by the clerical staff. This is in direct
violation of Rule 1, the Scope of our duties. Violations
occurred on the following dates: April 23, 24, 25, 26,
28, 29, 30, May 1, 2, 3, 6, 7, 8, 9, 10, 13, 15, 16, 17,
20, 21, 22, 23, 24, 27, 28, 29, 30, 31, June 5, 7, 10,
11, 13, and 14, 1991.

II. The following claim is hereby presented to the
Company in behalf of Claimant W. Letoureau, C. Carswell
& S. Merchant (861- 91-DH032)

(a) The Carrier violated the Clerks' Rules Agreement
effective September 24, 1990, particularly Rules 1, 5,
12, 13, Appendix I and other Rules, when effective on or
about April 16, 1991, they removed position and clerical
duties from the Scope of the Agreement by abolishing
Train Clerk Position #287, hours 0800 to 1600, location
Rouses Point, NY, and assigned Yardmaster D. Longtin the
clerical duties of position #28 on a continual basis.

(b) Claimants should now each be allowed eight (8) hours
punitive pay based on the pro-rata hourly rate of \$13.64
per day, commencing April 17, 1991 and continuing for
each and every workday thereafter, on account of this
violation.

(c) That in order to terminate this claim, all clerical

duties of Position #28 must be returned to employees covered under the Scope of the Clerks' Rules Agreement.

(d) Claimants were qualified and should have been called in seniority order, subject to their availability, on a continual basis to perform the clerical duties of Train Clerk Position #28.

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

III. The following claim is hereby presented to the Company in behalf of Claimant Kyle Gregoire (861-91-DH035).

I claim one day's pay at pro rata rate, for each and every day the Rouses Point, NY, Yardmaster has performed clerical duties, which were previously and exclusively performed by the clerical staff. This is in direct violation of Rule 1, the Scope of our duties. Violations occurred on the following dates: June 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, July 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, August 1, 2, 5, 6, 7, 8, 9, 1991."

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 claims 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 claims 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 claims. 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 in Claim No. II. Inasmuch as Claim Nos. I and III do not have continuous liability, they are allowed as presented.

Accordingly, and for the foregoing reasons, the claim is sustained on procedural grounds alone. As to its merits, the claim is denied.

AWARD

Claim sustained in accordance with the Findings.

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.