

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30891
Docket No. CL-31010
95-3-92-3-922

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-10899) that:

1. The following claim is hereby presented to the Company in behalf of Claimant J.J. Sudlesky.

I claim a day's pay for violation of the Scope Rule and Past Practice Rule for Mr. T. Freeman, Trainman, Allentown, PA, doing Clerk's work at Allentown Yard: Mr. Freeman driving crews to and from motel with a van provided by the D&H Railway, also driving crews to their train and handling of the waybills. This work has always been done by first sub-division clerks, never by any other craft. I am claiming at a rate of \$97.64 for each day. The days I am claiming for are listed below:

September 26, 27, 29, 30, October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, November 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, 1990.

Copy of message #2031, dated September 25, 1990, awarding position to Mr. Freeman is attached.

II. The following claim is hereby presented to the Company in behalf of Claimant H. Gaughan (861-91-DH018)

Claiming sixty days' pay for each of the 60 days prior to the date that Trainmen E. Porter and G. Chicowitz work at Allentown, PA, driving crews and handling waybills and other clerical duties they perform that in the past was always Clerk work in this seniority district since Allentown was established on April 1, 1976."

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 as requested.

Accordingly, and for the foregoing reasons, the claims are sustained on procedural grounds alone. The merits of the claims are unconvincing. They are denied 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.