

Defendant

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32401
Docket No. SG-32839
97-3-96-3-176

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

Claim on behalf of D.J. Clayton Jr. for payment of one hour per day at the straight time rate and for readvertisement of his position to indicate an established time for a meal period, account Carrier violated the current Signalmen's Agreement, particularly Rule 12, when it advertised the position of Signal Maintainer at Bernard, Ohio, without indicating the time of the meal period for that position. Carrier also violated Rule 59(a) when it did not provide notice of its disallowance of the claim within the time limits. Carrier's File No. 15 (95-141). General Chairman's File No. 95-11-CD. BRS File Case No. 9744-C&O."

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 were given due notice of hearing thereon.

The Organization alleges violation of Rule 12 and Rule 59 of the Agreement. The claim is that the Carrier failed to apply the Agreement properly when it bulletined the Signal Maintainer position. The Organization argues that Rule 12 requires a stated meal period listed in an advertisement bulletin which must be between the end of the fourth hour and the beginning of the seventh hour. The Organization further argues that the Carrier failed to timely respond to the initial claim and thereby violated the time limits of Rule 59.

The Carrier argues that the Agreement does not mandate a precise time frame for the meal period, but only that the meal period be taken between the fourth and seventh hour after commencing work. The Carrier denies the claim on the basis that it is required only to provide the meal within a two hour time frame as allotted by Agreement.

The Board notes that the on-property record indicates no dispute by the Carrier that the time limits were violated. The Carrier's Submission relating to the procedural issue may be correct, but it comes too late for consideration. Under the long established procedures of this Board new material must be ignored. Accordingly, that portion of the claim must stand. The Carrier denied the January 8, 1995 claim by letter of June 26, 1995 and as such, its liability ended on that date.

The Board carefully reviewed Rule 12 and the probative evidence of this record. We do not find the Rule and evidence on point with this dispute. The claim is sustained only on the procedural violation as indicated above and not on merits.

AWARD

Claim sustained in accordance with the Findings.

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 30th day of December 1997.