

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33604
Docket No. SG-34302
99-3-97-3-899**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville & Nashville
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of C.D. Mills and S.G. Barish for payment of one hour each per day at the time and one-half rate, beginning September 3, 1996, and continuing for the term of the violation, account Carrier violated the current Signalmen’s Agreement, particularly Appendix U and Rule 68, when it did not provide the Claimants with proper headquarters facilities at Madisonville, Tennessee. Carrier also violated Rule 54 when it failed to provide notice of the disallowance of the claim within 60 days of the date on which the claim was presented. Carriers’s File No. 15(97-1). General Chairman’s File No. 96-158-07. BRS File Case No. 10376-L&N.”

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 that a procedural violation occurred when the first level Carrier Officer authorized to receive claims did not respond to the claim presented to him within 60 days of his receipt of the claim.

When the Organization appealed the claim to the highest Carrier officer designated to handle claims on appeal, Carrier's response was solely directed to the merits. It failed to mention, let alone present any arguments to counter the alleged procedural violation. Nor did the Carrier refer to said procedural error in any post conference communication.

In its Submission, the Carrier argues that the procedural argument is bogus because the Organization never presented the Carrier with a copy of the claim originally filed that was not answered. The Carrier's defense comes too late. It should have challenged the Organization during the on-property handling as the Carriers did in Third Division Awards 28168, 26675 and 30024.

The on-property record reflects that the Carrier did not timely respond to the claim originally presented. Pursuant to the Rule, the claim is to be sustained without regard to the merits, however, this claim is continuing commencing September 3, 1996.

Generally, continuous claims upon which a Carrier defaults are sustained up to the date the Carrier denies the claim, which in this case was February 28, 1997. However, there is one additional feature in this case. The Carrier in its letter of February 28, 1997 stated without rebuttal that the Assistant Signal Maintainer position no longer existed.

Based solely upon the procedural violation, the claim on behalf of each Claimant will be sustained for one hour at the pro rata rate for each workday up to but not including the date the Assistant Signal Maintainer's position was abolished.

Regarding the merits, there exists insufficient evidence of any Rule having been violated.

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 16th day of November 1999.