

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34080
Docket No. SG-34416
00-3-98-3-29**

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

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

STATEMENT OF CLAIM:

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

Claim on behalf of W. J. Baudendistel for payment for all time lost when he was not allowed to return to work until September 9, 1996, after he received medical clearance from his physician on July 16, 1996, and for the time to be credited toward his vacation qualification, account Carrier violated the current Signalmen’s Agreement, particularly Rules 65 and 69, when it improperly delayed the Claimant’s return to service. Carrier also violated Rule 54 when it did not provide notice of the disallowance of the claim within 60 days of the date on which the claim was filed. Carrier’s File No. 15(97-53). BRS File Case No. 10477-B&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 initial claim was filed by letter dated November 11, 1996. It involved alleged failure of the Carrier to return the Claimant to work after he had been released by his physician. The Organization maintained that the Claimant had been released to return to work on July 16, 1996, but the Carrier failed to act in a diligent manner, returning the Claimant 54 days later on September 9, 1996. Accordingly, the claim requests reimbursement for the "(38) working days" lost and not credited toward "qualification time for vacation in 1997."

The substance of the full on-property record permits the Board no alternative but to sustain the claim as presented. The Organization appealed the claim on February 26, 1997 stating:

"This claim was sent to, C. J. Nicely, the CSXT officer designated to receive claims for Signal Construction employees, the claim was sent Certified Mail, by Local Chairman (LC) R. D. Elstun, claim date November 11, 1996, mailed on November 12, 1996. Mr. Nicely, to this date has never responded to this claim."

The Board carefully read every piece of correspondence exchanged on the property. There was no rebuttal. No Carrier officer denied the Organization's allegation that the first level Carrier Officer failed to timely respond. The Carrier's focus on the property was solely over the merits of the claim.

The Rules of the Agreement must hold. The Board is permitted no latitude in this regard. Specifically, Rule 54 of the Agreement states that claims must be disallowed "within 60 days from the date same is filed. . . ." It further states that if the claim is not disallowed within the time limits, then "the claim or grievance shall be allowed as presented. . . ." There is ample precedent that the Board may not reach the merits of a claim if it is procedurally defective (Third Division Award 30876). Here, the Carrier offered no information and presented no defense to the alleged failure to respond to a claim filed by Certified Mail. Therefore, Rule 54 was violated and the claim must "be allowed as presented." We are without authority to move beyond the procedural error and further consider the merits. The claim for 38 days' pay must be sustained.

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AWARD

Claim sustained.

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 25th day of May, 2000.