

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35031
Docket No. SG-34709
00-3-98-3-367**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 J. L. Couch, R. L. Jarrell, D. E. Jett, G. A. Amerman, J. E. Dunahee, and E. J. Holmes for payment of 1,916 hours at the straight time rate and 849 hours at the time and one-half rate, to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly Agreement No. 15-18-94 and Rules 14, 30, 46, and 47, when it used construction forces to perform work between Beckemeyer and East St. Louis, Illinois, from February 10, 1997, to April 25, 1997, and deprived the Claimants of the opportunity to perform this work. Carrier also violated Rule 54 when it failed to provide notice of the disallowance of the claim within the time limits. Carrier's File No. 15(97-137). BRS File Case No. 10562-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 Organization argued both on the property and to the Board that the Carrier violated Rule 54, Grievances and Claims, of the current Agreement in a failure to have disallowed the claim within the 60-day time constraints of such Rule. It therefore asks that the claim be allowed as presented.

There is no question that the record fails to show that the District Engineer Signals had, in fact, dispatched a timely letter of denial of the claim to the Organization as required by Rule 54.

The Organization filed the claim under date of February 24, 1997. Basically, it was claimed that commencing on February 10, 1997 the Carrier violated certain Agreement Rules in its use of System Signal Construction Gang employees instead of Division maintenance employees to locate and mark underground signal cables in anticipation of a contractor installing new cable along the right-of way.

The Organization followed up its initial claim with another letter of May 19, 1997 covering the on-going nature of the claim. In its May 19, 1997 letter, the Organization referenced its prior letter of February 24, 1997, and gave the Carrier a copy of a receipt of certified mailing for its previous letter, noting that it had not received a reply to that letter.

The Organization thereafter appealed the claim to the Director Employee Relations under date of July 15, 1997 stating, among other things, the following:

“This claim has never been responded to by Mr. Witherspoon to this date, it was even resubmitted to him in May. Therefore this Committee is appealing this claim to you.”

The Director Employee Relations offered various rationale in a written denial of the appeal as to why the claim was lacking in merit or Agreement support. As to the matter of the Organization’s time limit argument, the Director Employee Relations said:

“Your assertion that the Carrier is in violation of the time limit provisions of the schedule Agreement is also noted, however, attached hereto is District Engineer Signals E. M. Witherspoon’s response to claim presented by BRS Local Chairman dated February 24, 1997.”

The attachment provided by the Carrier was what appears to be the draft of an undated, handwritten, letter of denial on a preprinted format for subsequent typing or placement on official stationery. Nothing of record was presented to show that the draft letter had in fact been formally reproduced, much less that either the draft or a formal letter had, in fact, been dispatched by mail or otherwise to the Organization.

Clearly, the record supports the conclusion that the Carrier failed to respond to the claim as initially presented within the time limits proscribed by Rule 54.

Although Rule 54 calls for the payment of claims as presented, the Board, despite vigorous argument and protest from the Organization, finds no reason to allow the overtime portion of the claim. In this respect, the Board notes that when the Director Employee Relations responded to the appeal of the claim it was stated that the number of man hours alleged to have been worked by the System Signal Construction Gang during the period of the claim was not substantiated by any evidence of record. The Organization did not thereafter present any evidentiary documentation for the total time claimed.

Under the circumstances, without commenting upon the merits of the claim in any way, the Board finds that the claim shall be sustained for the number of straight time hours set forth in the Statement of Claim, but that portion of the claim for overtime hours is denied.

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 25th day of October, 2000.