

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36678
Docket No. CL-36300
03-3-00-3-616**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad)

STATEMENT OF CLAIM:

**“Claim of the System Committee of the Brotherhood (GL-12651)
that:**

- 1. Carrier violated the Clerical Agreement on September 25, 1992, when they abolished the Transportation Service Agent, Position No. 154, Bowling Green, Kentucky, with the rate of pay \$125.66 and established a General Clerk, Position No. 156, with a rate of pay \$115.04, reducing the agency rate and all duties remained the same.**
- 2. Carrier shall now restore the Transportation Service Agent rate plus all increases; compensate employees working position over past years/months with rate being \$125.66 back in September 1992 and should be approximately \$128.37 now. This due to abovementioned violation.”**

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.

By letter dated February 21, 1994 District Chairman W. F. Riley submitted a claim to Director - Customer Service Operation J. R. Odam based on the contention the Carrier had allegedly violated Rule 31(c) some 18 months earlier on September 25, 1992 when, pursuant to Bulletin No. 55-ABOL issued August 18, 1992, it abolished Transportation Service Agent Position No. 154 with a pay rate of \$125.66 and established General Clerk Position No. 156 with a pay rate of \$115.04 at Bowling Green, Kentucky, to perform the same agency work. This belatedly filed claim sought restoration of the Transportation Service Agent rate, as well as compensation on behalf of all employees who worked the disputed position commencing in September 1992.

Under date of March 21, 1994, the Director-Customer Service Operation denied the claim on the basis it had not been timely filed in accordance with Rule 36. By letter dated May 17, 1994, then General Chairman L. H. Tackett appealed the matter to Senior Director Employee Relations R. P. Byers, asserting that the first level officer's position was ". . . contrary to the provisions of the Agreement and interpretations thereof. . . ."

Five and one-half years later, i.e., by letter dated January 25, 2000 then General Chairman G. A. Rowe informed Senior Director Labor Relations J. C. Amidon that although the parties had allegedly discussed the instant claim during a conference held on April 27, 1995, ". . . no decline has ever been received from your office." On that basis, the General Chairman requested that the claim be placed in line for payment. That belated request was denied by Senior Director Labor Relations Amidon in a letter dated February 9, 2000 on the basis it was not timely advanced in accordance with Rule 36(c) of the parties' Agreement.

We note that the Statement of Claim as set forth in the Organization's September 29, 2000 Notice of Intent to the Board does not cite any time limit violation on the part of the Carrier, but rather presents the claim on its merits. In any event, the Carrier's alleged failure to deny the appeal following a conference that was allegedly held on April 27, 1995 did not "revive" TCU's stale and untimely 18-month old claim, which was void ab initio when filed on February 21, 1994. An original defect in perfecting the processing of a claim renders irrelevant or moot further later alleged defects. Contrary to the Organization's position, the position abolishment was a onetime event which occurred on September 25, 1992 and did not constitute a "continuing claim." See Third Division Award 25208 as well as Public Law Board No. 2945, Award 71 and Public Law Board No. 3775, Award 42. Based on all of the foregoing, this claim must be dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of August 2003.