

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37068
Docket No. MW-36650
04-3-01-3-187

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak)
(Northeast Corridor

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it called and assigned junior B&B Foreman and Mechanic employees from P.C.Y. Philadelphia to work overtime at Wilmington on October 22, 23, 29 and 30, 1999 instead of Wilmington B&B Gang C-402 Foreman J. Jaworowski, Mechanics B. DiEleuterio, J. Pruna, J. Hoagland and N. Beaver (System File NEC-BMWE-SD-4008 AMT).**
- (2) The Agreement was further violated when the claim as presented on November 20, 1999 was not disallowed by the Carrier in accordance with Rule 64(b).**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants J. Jaworowski, B. DiEleuterio, J. Pruna, J. Hoagland and N. Beaver shall now each be compensated for sixteen (16) hours' per day for four (4) days."**

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.

This claim raises procedural issues under Rule 64(b) which provides, in pertinent part:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the designated office of Amtrak authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim is based.

Should any such claim or grievance be disallowed, Amtrak shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative), in writing, of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented. . . ."

The record reflects that Claimant Hoagland signed a time claim dated November 20, 1999 for overtime for four dates on behalf of himself and the other Claimants, and sent it to J. Collins, Engineering Manpower and Labor. By letter dated December 6, 1999, Collins informed Hoagland that he was not the proper Carrier officer for receipt of such claims under Rule 55, and stated that he was forwarding it to Division Engineer Hatfield's office, and that he could expect an answer from him within the time limits of Rule 64. No such answer was sent by the Carrier. On March 6, 2000 the Organization progressed the claim on its merits, indicating that it was payable because the Carrier failed to timely deny the claim. On May 5, 2000 the Carrier sent a letter indicating that the claim did not reach the proper Carrier officer, accounting for his failure to timely deny it, and agreed to pay Claimant Hoagland on this basis, noting that the request for payment to other Claimants was void ab initio because Hoagland was not the designated representative to file on their behalf and had no authority to do so. By letter dated June 20, 2000 the Organization stated that the claim was submitted on behalf of all

Claimants, and asserted that the Carrier was not permitted to raise any basis for denial because it had missed the time limits under Rule 64(b) which states that the claim was to be allowed as presented. The Carrier's response and denial of October 10, 2000 noted the fatal flaw of the claim as presented, both as to Hoagland's status and the office to which it was presented, and asserted that the claim must be properly presented to require a response, citing Third Division Award 16164.

The Organization argues that the Carrier's failure to timely respond to the claim prevents it from raising the defenses later argued including who the claim was presented to and the propriety of Hoagland signing it on behalf of other employees, citing Third Division Awards 21900, 33452, 34195 and 34198. It asserts that the language of Rule 64(b) requires that the claim be "allowed as presented" when the Carrier fails to timely respond, thereby supporting payment for the overtime amounts claimed for each of the Claimants.

The Carrier contends that only claims properly submitted in compliance with Rule 64(b) need be disallowed, and because this claim was void ab initio with respect to Claimants other than Hoagland, and was not filed with the proper Carrier officer, both requirements to be strictly complied with, its failure to timely respond becomes irrelevant and moot, relying upon Third Division Award 25208.

A careful review of the record convinces the Board that the defect caused by Claimant Hoagland's filing the claim with the wrong Carrier officer does not render it void, as the Carrier did not opt to deny it on those grounds but rather, chose to forward it to the correct officer and inform the Claimant it was doing so and that he could expect to receive an answer from the correct officer within the time limits of Rule 64(b). Thus, the Carrier assumed the responsibility of forwarding it timely and waived any right it may have had to require the Claimant to do so. There is no dispute that the Carrier failed to timely respond under the provisions of Rule 64(b). It paid Claimant Hoagland due to this error.

The only question that remains for the Board is whether it is also required to pay the other named Claimants, regardless of whether Hoagland had the authority to sign a claim on their behalf, because it failed to raise this defense to the claim in a timely fashion. We are of the opinion that the initiation of the claim on behalf of all Claimants, signed only by Hoagland, did not make it an invalid claim, per se, and because the Carrier assumed responsibility of forwarding the claim without exception to the procedural issues, the Carrier's failure to timely respond under the

time limits contained in Rule 64(b) precludes it from relying upon such defense to avoid payment of the claim as presented. Accordingly, we direct that all Claimants other than Hoagland (because he has already received payment) be compensated in the amounts set forth in the claim. This finding does not address either the merits of the Carrier's defense raised in an untimely fashion, or the underlying merits of the Organization's claim to the overtime payment involved.

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 22nd day of June 2004.