

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37737
Docket No. CL-38319
06-3-04-3-251

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13039) that:

CLAIM NO. 1
TCU File 14.150 (7) SCL
CSXT File 6 (03-0395)

1. Carrier violated the National Agreement of April 15, 1986, when it disallowed and/or refused to provide New York Dock protection benefits or allow other protective benefits as set forth in Section 3 of New York Dock to employees affected by the Carrier's implementation of Direct Train Control.
2. As a result of the implementation of Direct Train Control (DTC) at Beaver Street Tower, located at Jacksonville, Florida, the attached list of Clerical employees' positions, which were abolished effective September 10, 1999, they became directly affected, displaced employees, or were placed in a worse position with respect to compensation. By the conditions of the National Agreement effective April 15, 1986, the named employees and any employees subsequently directly affected, are entitled to an election of protective benefits, from the date of position abolishments or displacement.

Position 4J08-100 C. H. Peacock Id. No. 154493
Position 4J08-200 J. P. Donehoo Id. No. 174904

Position 4J08-300 M. W. Wright Id. No. 149287
Position 4J08-R03 C. N. McKee Id. No. 624292

3. As the result of the exercise of displacement rights by employee M. W. Wright (from the above list) Clerk J. R. Thompson, Id. No. 146144, was subsequently directly affected and is entitled to an election of protection benefits, conditions and any loss of compensation effective the date released from the assigned position from which displaced, which was position A161 (Claims Research Clerk).

CLAIM NO. 2
TCU File 14.152 (7) SCL
CSXT File 6 (03-0393)

1. Carrier violated the National Agreement of April 15, 1986, when it disallowed and/or refused to provide New York Dock protection benefits or allow other protective benefits as set forth in Section 3 of New York Dock to employees affected by the Carrier's implementation of Direct Train Control.
2. As a result of the implementation of Direct Train Control (DTC) at Beaver Street Tower, located at Jacksonville, Florida, the attached list of Clerical employees' positions, which were abolished effective September 10, 1999, they became directly affected, displaced employees, or were placed in a worse position with respect to compensation. By the conditions of the National Agreement effective April 15, 1986, the named employees and any employees subsequently directly affected, are entitled to an election of protective benefits, from the date of position abolishments or displacement.

Position 4J08-100 C. H. Peacock Id. No. 154493
Position 4J08-200 J. P. Donehoo Id. No. 174904
Position 4J08-300 M. W. Wright Id. No. 149287
Position 4J08-R03 C. N. McKee Id. No. 624292

3. As the result of the exercise of displacement rights by employee J. R. Thompson, Id. No. 146144, who was subsequently directly affected by the displacement rights of employee M. W. Wright (from the above list) and employee D. A. Scheibe, Clerk D. D. Bowman, Id. No. 181685, was subsequently directly affected and is entitled to an election of protection benefits, conditions and any loss of compensation effective the date released from the assigned position from which displaced, which was position A162 (Claims Research Clerk).

CLAIM NO. 3
TCU File 14.151 (7) SCL
CSXT File 6 (03-0394)

1. Carrier violated the National Agreement of April 15, 1986, when it disallowed and/or refused to provide New York Dock protection benefits or allow other protective benefits as set forth in Section 3 of New York Dock to employees affected by the Carrier's implementation of Direct Train Control.
2. As a result of the implementation of Direct Train Control (DTC) at Beaver Street Tower, located at Jacksonville, Florida, the attached list of Clerical employees' positions, which were abolished effective September 10, 1999, they became directly affected, displaced employees, or were placed in a worse position with respect to compensation. By the conditions of the National Agreement effective April 15, 1986, the named employees and any employees subsequently directly affected, are entitled to an election of protective benefits, from the date of position abolishments or displacement.

Position 4J08-100	C. H. Peacock Id. No. 154493
Position 4J08-200	J. P. Donehoo Id. No. 174904
Position 4J08-300	M. W. Wright Id. No. 149287
Position 4J08-R03	C. N. McKee Id. No. 624292

3. As the result of the exercise of displacement rights by employee J. R. Thompson, Id. No. 146144, who was subsequently directly

affected by the displacement rights of employee M. W. Wright (from the above list) employee D. A. Scheibe, employee D. D. Bowman, Id. No. 181685, and employee W. M. Chasteen, Id. No. 608532, was subsequently directly affected, and is entitled to an election of protection benefits, conditions and any loss of compensation effective the date released from the assigned position from which displaced, which was position A165 (Claims Research Clerk)."

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 July 15, 1999, Director Labor Relations R. P. Byers notified TCIU General Chairman G. A. Rowe of the Carrier's intent to implement the direct control of train movements and/or related rail operations at the Beaver Street Tower on the Jacksonville Terminal Subdivision on or about September 6, 1999, in accordance with the terms of Article IV - Direct Train Control of the April 15, 1986 National Agreement. According to the notice, the Carrier contemplated that three Train Director and two Relief Clerk positions would be abolished as a result of the implementation.

Without prejudice to the position of either party, by Agreement executed on June 25, 2002, General Chairman Rowe and then Senior Director Labor Relations N. B. Grissom agreed that 14 employees, who were either the incumbents of Train Director or Relief Train Director positions that had been abolished on September 10, 1999, as well as those employees who were known on June 25, 2002 to have been affected by displacements, would be afforded protection as set forth in the 1986

National Agreement. Because Claimants J. R. Thompson, D. D. Bowman and W. M. Chasteen were not named in the Organization's July 19, 2000 claim, they were not included in that group.

Thereafter, by letter dated December 11, 2002, the Claimants, all of whom were Claims Research Clerks, ultimately asked TCIU International President Robert A. Scardelletti to intercede and arrange to have them included in the June 25, 2002 settlement. A copy of their letter was also sent to CSXT President M. J. Ward.

Reviewing the voluminous record in the light most favorable to the Claimants, the Board concludes that the claims must be dismissed. This is so because we find that the Claimants had an obligation to file their claims within 60 days of the June 25, 2002 settlement Agreement, if not before, if they genuinely thought that they should have been certified as being affected and should have been included in the settlement, in order to comply with the terms of Rule 37 - Time Limits - Claim or Grievances of the parties' Agreement. Although the record reveals that on or after February 12, 2001, the Claimants sought entitlement to "New York Dock" benefits based on the allegation they were adversely affected by job displacements that took affect on or about July 21, August 24, and September 22, 2000, respectively, such requests were denied by Manager Labor Protection J. T. Keyser on or about April 25, 2001, based on the contention there was no evidence that they had suffered any adverse effect as a direct result of the closing of the Beaver Street Tower. Significantly, those rejection letters were not further progressed by the Claimants. Furthermore, as noted above, the Claimants waited almost six months after the June 25, 2002 settlement Agreement was executed before they inappropriately addressed their belated concerns to the parties' respective Presidents. To his credit, TCIU District Chairman J. E. Papp filed new claims on their behalf in April 2003. However, as N. J. Brown, Director of the Crew Management Center pointed out in her June 2003 declinations, those claims were obviously untimely. To be sure, the belated filings were not the fault of the Organization. Although the Claimants complained that they were not included in the Organization's original claim dated July 19, 2000 only after learning about the parties' June 25, 2002 settlement, we note that they failed to file a claim with the Carrier's designated officer even at that point in time. Thus, the untimeliness of the instant claims is the sole responsibility of the Claimants. The Organization's unsuccessful attempt to belatedly rectify the Claimants' inaction does not relieve the Claimants of their primary responsibility to file their claims within 60 days of the date they were allegedly adversely affected. The doctrine of laches also affects the arbitrability of these

stale claims. Accordingly, as noted above, the Board has no choice but to dismiss the claims account barred.

Even if we could somehow reach the merits of the dispute, the Claimants' position still could not be sustained. This is so because the record further reveals that General Chairman Rowe's office had advised the Claimants in July 2002 that they had not been included in the settlement because the Organization had no record of any claim having been filed by them. The General Chairman further informed the Claimants that the Organization had no proof that the Claimants had been adversely affected. For reasons known only to the Claimants, they never supplied the Organization with evidence that they were placed in a worse position with respect to compensation. This Board has often held that, "Saying it is so, does not make it so."

In the final analysis, however, because the Claimants did not timely file a claim with the requisite evidence necessary to sustain their position, the Board is prohibited from speculating on the merits of the dispute.

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 23rd day of February 2006.