

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39848
Docket No. CL-40364
09-3-NRAB-00003-080151**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (**(Transportation Communications International Union**
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

**“Claim of the System Committee of the Organization (GL-13196)
that:**

- (1) The Carrier acted in an arbitrary, capricious and unjust manner violating rules 6, 7, 10, 11, 12 and 14 and other related rules of the TCU Clerical Agreement, when on April 1, 2006 the Carrier failed or refused to properly return Claimant to his assigned job as required at the completion of an emergency service disruption as covered under rule 10, paragraph (c) of the governing agreement.**
- (2) The Carrier shall now be required to compensate Claimant 40 hours for each week beginning April 1, 2006 and will continue until this claim is settled at the Ticket Agent rate of pay.**
- (3) The Carrier shall compensate Claimant for any lost health benefits and make Claimant whole for any and all benefit entitlement owed, had Claimant been returned to service in a timely manner.**
- (4) The Carrier failed to respond within the applicable time limits as set forth in Rule 25 (a) of the TCU Clerical Agreement. On May 31, 2006 district Chairman, Nathan White Jr., mailed a certified claim to Marian Fordham, Claimant’s immediate Supervisor as prescribed under the Clerical agreement. Ms. Fordham has**

failed to give her reason for disallowance of this claim within sixty (60) days, therefore this claim must be paid as presented.”

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.

Amtrak operated a passenger train service known as the Sunset Limited, from Orlando, Florida, to the west coast. A portion of that route involved tracks owned and operated by CSX Transportation (CSXT). CSXT maintained the trackage, signals and right-of-way and controlled the operation of all trains on its tracks. The CSXT tracks on which the Sunset Limited ran were damaged by Hurricane Katrina. As a result, CSXT declared an emergency and operations were suspended for all service on its tracks. Pursuant to that notice, Amtrak suspended operation of the Sunset Limited between Orlando, Florida, and San Antonio, Texas.

Claimant D. Fjeld was employed as a Station Agent at Amtrak's Pensacola, Florida, Station. On August 29, 2005, Amtrak District Manager M. Fordham sent the Claimant a memo advising him that effective immediately, and until further notice, his position as a Station Agent at Pensacola, Florida, was abolished due to Hurricane Katrina. On April 18, 2006, General Chairman R. Kloos sent a letter to Amtrak Director of Labor Relations L. Miller, inquiring about the status of rail passenger service on the Sunset Limited. On April 25, Miller advised Kloos that the emergency conditions that had existed on August 29, 2005 still existed and that no decision had been made concerning the future of the Sunset Limited. Miller indicated that it would be premature to apply protective provisions because emergency conditions still existed.

The Claimant filed the instant claim with Fordham on May 31, 2006. No response was received and on August 4, 2006, the Organization filed an appeal with Labor Relations Officer W. Sales. The appeal was initially denied on October 4, 2006. On November 28, 2006, the Organization filed an appeal with Director of Labor Relations Miller. On October 31, 2007, the Organization notified the Carrier of its intent to progress the case to the Board.

The Organization contends that the Carrier violated the Agreement when it failed to return the Claimant to service at the completion of the emergency situation as covered by Rule 10(c) of the Agreement. The Organization further contends that the Carrier violated Rule 25 (the procedural requirements of the Agreement) on three occasions when it did not respond to the claim or did not respond in a timely manner. Pursuant to the plain language of the Agreement, when such a violation occurs, the claim must be allowed. Therefore, as a remedy, the Organization requests that the Carrier shall now be required to compensate the Claimant 40 hours for each week from April 1, 2006 until this claim is settled.

Conversely, the Carrier contends that it acted properly in this matter. According to the Carrier, the burden of proof is on the Organization to prove that the Carrier acted improperly, and it cannot do so. The Carrier asserts that there was no violation of the Agreement when it did not return the Claimant to his position at Pensacola. Further, the Carrier contends that even if the Carrier did violate the procedural provision of the Agreement, the amount of liability should be limited to the date on which the Carrier did respond to the claim. Because the burden of proof is on the Organization, the Carrier contends that the Organization cannot meet its burden of proof.

After a review of the evidence and positions of the parties, the Board finds that the Organization has been able to prove that the Carrier did fail to meet the time requirements of Rule 25 when it did not respond to the instant claim. However, while it is clear that the Carrier did not initially respond to the claim, it did eventually respond on October 4, 2007. While the Organization is correct that the Carrier violated the procedural requirements of the Agreement, it is clear that the matter was eventually denied by the Carrier and the matter proceeded to the Board. Although there was a procedural violation, the Board cannot find that the remedy should be unlimited. In Third Division Award 31898 the Board held:

“ . . . Further, the Board concludes the Carrier was obligated to reply to the original claim. . . . The Organization’s procedural position has merit. In accordance with Rule 7-B-1, the Award will sustain the claim from its inception to April 3, 1992, when the Carrier did reply to the claim. There is no basis to find that the remedy must extend indefinitely beyond this date. Many previous Awards support this analysis in instances where the monetary remedy is a continuing one. . . .”

As to the merits, the Board cannot find that there is sufficient evidence to show that the Organization met its burden of proof. Due to the procedural error, the claim shall be partially sustained and the Claimant made whole from the date of the claim, May 31, 2006, until the date of the denial, October 4, 2006.

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 31st day of July 2009.