

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40617
Docket No. SG-38612
10-3-NRAB-00003-040622
(04-3-622)

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of J. J. Reisenwitz III, for time and one-half his rate of pay the Claimant was denied, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-4, when it called the wrong employee for an open shift assignment on May 31, 2003. Carrier also violated the time limit for denying the claim under Rule 56. Carrier’s File No. NEC-BRS(S)-SD-1019. General Chairman’s File No. JY32101056-180310. BRS File Case No. 13018-NRPC(S).”

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 filed claim on June 5, 2003 alleging a Carrier violation of Agreement B-4, wherein the Carrier failed to properly call the Claimant. The Organization argued that the Claimant had been properly listed on the call out sheets and was next up for call. The Claimant was properly called and on May 29, 2003, changed his personal plans and accepted the vacancy on the Philadelphia Trouble Desk shift for May 31, 2003. The Organization argued that the Carrier violated the Agreement when, without properly following the 48-hour notice requirements of Part (5) utilized another Call Out List and employee for the position. Additionally, the Carrier violated Rule 56 when the Division Engineer did not respond to the June 5, 2003 claim.

The Carrier does not deny that the Claimant accepted the call and then was informed that a senior employee would be covering the vacancy. The Carrier contends that a senior qualified employee called in requesting the position and after determining that the Carrier was in error, Senior Engineer W. Bryan corrected the error utilizing another Call Out List. The Claimant was notified that his selection was in error and he would not be needed. The Carrier points out that after a review of the Call Out List and determination that an error was made, it was properly corrected. The Carrier also argues that the Division Engineer properly responded to the June 5, 2003 claim.

The Board first considered the Organization's allegation of procedural error. As a threshold issue, the parties must comply with the time lines of Rule 56. The record evidence establishes that the original claim of June 5 was timely submitted to the Carrier. Thereafter, the Organization argues that the response received contained a different claim of M. Sweeney and provided the envelope (Certified Receipt ending in 8890) and claim. However, the Board notes that the instant claim with a Certified Receipt No. ending in 8338 was shown by the Carrier as having been mailed on July 24 and received and signed for by the Local Chairman on July 25, 2003. Although the Organization denied the Carrier's rejoinder, the Board finds it is proof and there is no showing either that the instant claim was not signed for, or that what was signed for with the correct Certified Receipt No. 8338 was different than a proper denial. Accordingly, the procedural argument is rejected.

As for the merits of the claim, the Organization's argument is that the call out change was improper, which the Carrier denied. The Board fails to find proof that the senior employee called was improper. There is no showing by the Organization that the correction was not proper, that the senior employee who complained lacked entitlement to the Trouble Desk call out, or that the update was not in compliance with the Agreement.

The Board carefully considered the Carrier's argument that it made a "review of the call out list and correction of the assignment." After a study of the Agreement and the claim, we find no direct assertion of any named employee added to the Call Out List without the appropriate written notice requirements. The amended Call Out List for which the Carrier corrected an admitted error was not shown to have been in violation of Appendix B-4. The claim must therefore be denied for lack of proof.

AWARD

Claim denied.

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 27th day of August 2010.