

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40629
Docket No. SG-39151
10-3-NRAB-00003-050626
(05-3-626)

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 D. T. Ingersoll, for three hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-4, when it failed to call the Claimant for overtime service on his assigned territory on June 5, 2004, causing the Claimant to miss a work opportunity. Carrier compounded this violation by failing to respond to the initial claim within the time limits outlined in Rule 56. Carrier’s File No. NEC-BRS(S)-SD-1051. General Chairman’s File No. JY321010108-180412. BRS File Case No. 13377-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 a claim dated July 27, 2004. The claim asserted that the Carrier failed to properly call out the Claimant on June 5, 2004 when a track occupancy light in the vicinity of Holmes Interlocking on No. 2 Track was called into the C&S Trouble Desk. The Assistant Forman called Inspector Semmens in violation of Appendix B-4 call out procedures because the Claimant was next out.

During the progression of this claim, by letter dated September 8, 2004, the Organization argued that the Carrier failed to respond to the July 27, 2004 claim. Although properly submitted, the Carrier's response of November 4, 2004 violated Rule 56 of the Agreement according to the Organization.

The Carrier denied both procedural error and violation of Appendix B-4. On procedure, it argued that the claim was never submitted and, therefore, could not be answered. On the merits the Carrier contended that although the Trouble Desk Log does indicate that Inspector Semmens was contacted, he was only notified of the problem. The Carrier indicated in its February 11, 2005 response that it attached the payroll records confirming that Inspector Semmens performed no service on June 5, 2004.

The Board notes that the documentation submitted by the Organization indicates that the initial claim was postmarked July 29, 2004. For unexplained reasons, the envelope shows "Return to Sender" and is marked "Attempted Not Known." The parties clearly utilize the U. S. Postal Service. While there is nothing in the record as to the date the claim was returned by the U. S. Postal Service to the Organization, the Carrier's obligation to evaluate a claim does not kick in until it receives a claim and not before (Third Division Award 25208). The Board finds no dispute from the Organization that the U. S. Postal Service could not deliver the initial claim. Under these circumstances, a procedural error by the Carrier did not occur.

On merits the Organization did not prove that Inspector Semmens was called out on overtime to work on June 5, 2004 on the track occupancy light. There is no dispute that he was called around 5:45 A.M., but the facts do not prove a violation of the overtime call out procedures. The payroll records of Inspector Semmens support the Carrier's position that the on-duty Trouble Truck Maintainers were contacted around 4:00 A.M. and resolved the problem without Semmens' assistance.

In short, the failure of the U. S. Postal Service to deliver the mail does not make the Carrier in violation of the time limits of the Agreement. The notification to Signal Inspector Semmens that a problem had occurred and had been corrected by the Trouble Truck Maintainers does not equate to a violation of the Agreement. The claim must be denied.

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.