

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41381
Docket No. MS-41805
12-3-NRAB-00003-120038**

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

(Althea Roberts

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operations

STATEMENT OF CLAIM:

“Carrier violated Rule 1, Scope, of the Agreement between NJ Transit and TCU when it permitted an employee (Julie Kosiak) not covered by the Collective Bargaining Agreement to perform work preserved for TCU members. Mrs. Kosiak performed this work from 12/02/08 until 10/02/09 at which time the Carrier admitted to violating the contract and returned the work to TCU. Claimant is now requesting that Carrier pay damages in the amount of 2 hours overtime daily on a continuous basis beginning 12/02/08 and ending 10/02/09 when Carrier notified claimant that work would be returned.

Furthermore, in January 2008, Carrier violated the Collective Bargaining Agreement when it transferred work it no longer wished to perform, from employees not covered by the Agreement to TCU members without notifying TCU of its intent to change the Agreement as mandated by the Railway Labor Act. In assigning this new work to Appendix 2 positions Carrier, and Carrier alone, limited the coverage of this work to four rules under the Collective Bargaining Agreement. This is a clear violation of Rule 1k (Scope) that requires the agreement of both the General Chairman and Director of Labor Relations. Claimant is now requesting that Carrier be remanded back to TCU to negotiate an agreement on the terms of the transfer of this work.”

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.

Petitioner Althea Roberts, who was employed as a Revenue Accounting Clerk in Newark, New Jersey, here contends that by allowing management employee J. Kosiak to perform covered clerical duties commencing on or about December 2, 2008, and on a continuing basis thereafter, the Carrier violated the Scope Rule of the governing Agreement. For the asserted violations she claims payment of eight hours at the overtime rate for each day Kosiak was so assigned.¹

The record before the Board establishes that following the submission of this claim on May 19, an appeal Hearing was conducted on June 16, 2009. Denial of the claim followed on June 17. By letter dated June 30, 2009, the Petitioner then appealed the denial to the Director-Labor Relations, supplementing her appeal letter on August 6, 2009. Following an appeal Hearing on August 12, 2009, the Claimant clarified in writing on August 19 a point she had attempted to make during the August 12 Hearing. The matter was then denied again by letter dated August 24. On October 2, 2009, the Director- Labor Relations wrote to the

¹ The record reflects that although the Petitioner occupied a "Technical Coverage" (TC) position at the time she filed her claim, and was thus not entitled as a matter of right to seek redress under Rule 41 – CLAIMS FOR COMPENSATION, the Carrier waived its right in this instance, solely for purposes of allowing the Board to consider this Submission. It stresses that its waiver is without prejudice to its position in any other pending or future dispute that incumbents of TC positions must adhere to the procedures established by "Company Policy Number 3.17, Dispute Resolution, Resolution of Work-Related Problems applicable to all Non-Agreement Employees and Employees Holding Technically Covered (TC) Rail Agreement Positions."

Claimant to advise that the work at issue had been assigned to a TCU-representative and that the “Carrier considers this case closed.”

The record is silent thereafter until October 26, 2011 when the Board informed the Carrier that the Petitioner had filed a Notice of Intent to file a Submission within 75 days covering “. . . an unadjusted dispute between the individual and the New Jersey Transit.” The Notice of Intent referenced by the Board was dated October 17, 2011 and reiterated the claim that the Carrier had violated Rule 1, Scope, when it permitted J. Kosiak “. . . to perform work preserved for TCU members.”

The Carrier takes the position that the dispute must be dismissed as improperly before the Board. The claim, it argues, is clearly time-barred under both the provisions of the Collective Bargaining Agreement in effect with TCU and the binding procedural Rules of the National Railroad Adjustment Board. Specifically, it emphasizes inter alia that Rule 41 (e) “Claims for Compensation – Grievances” provides as follows:

“A claim or grievance denied in accordance with Paragraph (d) will be considered closed unless within one year from the date of the decision of the Director of Labor Relations, proceedings are instituted before the National Railroad Adjustment Board or such other Board as may be legally substituted therefore under the Railway Labor Act.”

The Board concurs with the Carrier, concluding that its argument is supported by an abundance of cited arbitral precedent. See, e.g., Third Division Award 41094, wherein the Board held: “The Petitioner’s Notice of Intent was received by the Board on October 14, 2010, i.e., more than nine months after the final denial including the 30-day extension. For this reason, the claim must be dismissed.” (Citations omitted.)

Petitioner Roberts very clearly has strong views on the issues presented, and presents to the Board as a highly effective advocate on behalf of her cause. At the end of the analysis, however, there is nothing in this record which in any way explains, let alone excuses or justifies, the Petitioner’s failure to progress the dispute

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to the Board within the contractually mandated time limits of the Agreement. Under those circumstances, the Board has no alternative but to dismiss the claim.

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 25th day of July 2012.