

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41559
Docket No. SG-41772
13-3-NRAB-00003-110311**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Massachusetts Bay Commuter Railroad**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Massachusetts Bay Commuter Railroad:

Claim on behalf of M. Pinto, N. T. Nicholas, D. Oxner, D. J. Coughlan, A. Harkins, and M. McCaul, for 4 hours pay each for performing service on their regular assigned rest days and 8 hours pay each for being deprived the right to work on their regularly assigned work days, beginning on May 14, 2010, and continuing until this dispute is settled and the Claimants are changed back to their normal rest days, account Carrier violated Rule 20 of the Agreement when it changed the Claimants’ rest days. Carrier’s File No. MBCR-BRS-05/2010. BRS File Case No. 14485-MBCR.”

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.

On June 1, 2010, the Organization filed this claim asserting that Carrier had violated Rule 20 of the Agreement in its establishment of five-day workweek positions with rest days other than Saturday and Sunday. At the time the claim was filed the Claimants' rest days were Sunday and Monday. The claim stated, "The current Agreement has been violated when the Claimants' positions were arbitrarily selected and or established and their rest days erroneously recognized and or changed from rest days of Saturday/Sunday to either Sunday/Monday or Friday/Saturday respectfully." In support of the claim the Organization entered a three-page document entitled "Southside Manpower" which is a schedule of assignments of employees at different locations. The document includes the schedule of each Claimant, all of whom have relief days other than Saturday/Sunday.

The claim of June 1, 2010 also informed the Carrier that, "The Organization's firsthand knowledge of the infractions in this instance is May 14, 2010 and is considered the benchmark of establishing a time line explicitly delineated in Rule 56 - Claims and Grievances (e)." The Organization argues that Rule 56 (e) provides that it can file a claim at any time where the violation is continuing in nature.

The Organization maintains that the Carrier failed to comply with the requirements of Rule 20 in that even if it did have operational problems that required the change of relief days, as it stated in its reply to the claim, it failed to show any evidence that an operational problem existed. Moreover, and most important, asserts the Organization, the Carrier did not attempt to negotiate or conference with the General Chairman as required by the Agreement.

In a letter dated August 20, 2010, the Carrier denied the claim asserting that it was procedurally defective. The Carrier contends that the Organization failed to meet its burden of proof in establishing essential elements of its claim. Further, it asserts, Rule 56 requires that the Organization file a claim on behalf of a Claimant within 60 days of the occurrence. Because the Organization failed to specify when the changes were made, argues the Carrier, the claim is deficient. It also contends that the changes the Organization alleges were made to the relief days occurred

before 2003 when the Carrier took over the service from its predecessor and well before the 60-day period to file a claim prescribed in Rule 56.

The on-property record of the Carrier's denials of the claim and subsequent appeals by the Organization indicates that the final decision by the Carrier was on August 20, 2010. The Organization appealed that decision on October 29, 2010.

The threshold issue that must be initially addressed is whether the Organization met its burden of proof to establish a prima facie claim. The Board finds that it has not. We have previously held, as stated in Third Division Award 17833, "It is a well-established principal of the Board that the burden is upon claimants to prove all essential elements of their claim, and that mere assertions are not proof." Here, the Organization only offers a work schedule with its claim. There is no verifiable evidence of when the relief days were changed. Absent reliable and relevant evidence of when a change to the relief days occurred, there is nothing in the record to indicate that the requirements of Rule 20 were triggered and resulted in a violation by the Carrier.

The Board also notes that the Organization alleges that the Carrier failed to provide it with documentation in 2003, in accordance with the "Implementing Agreement" when the Carrier took over the operation. It asserts that "if [the] Carrier had complied with the mandatory language contained in the 2003 Implementing Agreement between the parties, then the Organization would have been able to determine at that time that the Carrier was in violation of Rule 20." However, the Board finds that the time to determine if there was a violation of the Agreement was in 2003, well before the time limits set forth in Rule 56. If a change occurred to the relief days for the positions currently held by the Claimants in 2003, or at some point after that, the claim would have had to have been filed in accordance with the time limit provisions of the Agreement in place at that time. Clearly, the time to claim a violation of the "Implementing Agreement" and/or Rule 20 has passed with regard to the current schedule held by these Claimants.

The Board finds it is not necessary to address the procedural defect raised by the Carrier regarding the 60-day time limit for the filing of a claim as described in Rule 56 (a) of the Agreement. Nor do we need to address the Organization's position that it could file a "continuing violation" claim after it became aware of the

alleged change on May 14, 2010. Because we find that a prima facie claim has not been established, the timeliness of the claim does not need to be addressed.

The Board finds that the Organization failed to meet its burden of proof in establishing a prima facie claim and it must be denied without comment on the merits.

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 18th day of March 2013.