

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25560
Docket Number MW-25376

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier changed the headquarters of employes in the Electric Traction Department from Penn Station, Newark, New Jersey to Durant Yard, North Elizabeth, New Jersey beginning on October 21, 1981 (System File NEC-BMWE-SD-333).

(2) The agreement was further violated when Division Engineer Siravo failed to disallow the claims presented to him on January 10, February 6, March 11 and April 10, 1982 as contractually stipulated within Agreement Rule 64(b).

(3) As a consequence of either or both (1) and/or (2) above, each employe of the Electric Traction Department whose headquarters was changed from Penn Station to Durant Yard shall be allowed one (1) hour of pay per day for each day worked beginning on October 21, 1981 and extending up to May 27, 1982.

OPINION OF BOARD: On October 21, 1981, the Carrier changed the headquarters of the Electric Traction Department from Newark, New Jersey to Durant Yard, New Jersey. The Organization maintains that the Carrier moved the headquarters of an established traction gang and claims compensation for thirty (30) minutes before and after the Claimants regular work day which the Organization says the Claimants must spend traveling because of the move. The Organization claims that it reached an agreement with the Carrier to handle all of these claims as a "blanket claim" and submits a letter dated January 10, 1982 and a letter from the Assistant Division Engineer dated January 21, 1982 as support for its position.

The Organization contends that the Carrier violated Rule 84 of the Agreement which reads:

"HEADQUARTERS-CHANGING OF

"The location of established gang headquarters will not be changed except by agreement between the Chief Engineer and General Chairman."

This Rule was revised by the parties as of May 27, 1982.

The Organization states that the Carrier moved an established gang headquarters and that the Claimants, employees in the Electric Traction Department, are entitled to compensation under Rule 63 which reads in part:

"WAITING OR TRAVELING BY DIRECTION OF MANAGEMENT"

"An employee waiting, or traveling by direction of AMTRAK by passenger train, motor car, or any other method of transportation, will be allowed straight time for actual time waiting/or traveling during or outside of the regularly assigned hours,....".

The Organization also urges that the Claim must be allowed as presented because, it states, that "the designated officer" of the Carrier did not disallow the claims which were presented to the Division Engineer; the claims were disallowed by the Assistant Division Engineer, which the Organization says violates Rule 64(b) which reads:

"(b) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the designated officer of AMTRAK authorized to receive same, within sixty (60) days from the date the employee received his pay check for the pay period in which the alleged shortage occurs.

"Should any such claim or grievance be disallowed, AMTRAK shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative), in writing, of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of AMTRAK as to other similar claims or grievances."

The Organization further contends that the Carrier cannot raise the issue of the amount of compensation claimed because it was not raised by it on the property.

The Carrier contends that it did not change the headquarters of an established gang. The Carrier states that it abolished the gang at Newark and established a new gang at Durant, advertising the positions which were available there. An employee was free to bid on these positions or to bump for other positions if he did not choose to go to Durant. The Carrier also maintains that there is no contractual basis for compensation and no showing of actual loss to the employees.

The Carrier maintains that it did not agree to handle the claims as a "blanket" claim, and that this assertion was not raised by the Organization until over a year after the last discussion was held on the property and was not properly documented. The only one of the claims that was timely filed by the Organization under the sixty (60) day requirement of Rule 64 was the claim of December 3, 1981, and that in that case the appeal was submitted sixty-six (66) days after the claim was disallowed by the Carrier's Assistant Chief Engineer. This claim, the Carrier states, was not one of the claims which the Organization submitted to the Board and, therefore, the Organization's claim must be dismissed. The Carrier contends that the claims presented on January 10, February 6, March 11, and April 10, 1982, were improperly handled in the way in which they were presented to and appealed to the Carrier. Copies of these claims, which were submitted to the Board, were not presented to the Carrier's final appeal officer. The Carrier also submits that the Organization's procedural objection regarding which Carrier official responded to the claims was not presented until July 14, 1983, just prior to the Organization's notification to the Board on August 11, 1983, that it was submitting the claim to it. The Carrier objects that the July 14 letter raised this issue "de novo." The Carrier had not agreed that additional arguments could be raised by the Organization when it agreed to the Organization's request to extend the time limits for progression of the claim to the National Railroad Adjustment Board. The claim submitted to the Board, the Carrier says, is not the same claim that was handled on the property with the Carrier's highest officer designated to handle such matters, and it should be dismissed by the Board.

After a careful review of the lengthy, complicated record, the Board concludes that this case is a procedural quagmire. The Board will address itself only to the most significant and controlling aspect of the procedure followed in this case. The Board finds that the claims submitted by the Organization in this case were not timely filed as required by Rule 64(b). The Carrier changed the location of the headquarters on October 21, 1981. The claims submitted to this Board are dated January 10, February 6, March 11, and April 10, 1982, all of which are beyond the sixty (60) day period stated in Rule 64(b). No claims were submitted to the Board which were filed within the time period specified in the Agreement.

Therefore, the Board will dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

Award Number 25560
Docket Number MW-25376

Page 4

*That this Division of the Adjustment Board has jurisdiction over
the dispute involved herein; and*

That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

Nancy J. Dever
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.

