

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30876
Docket No. CL-30568
95-3-92-3-336

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10797) that:

(1) Carrier violated the effective agreement when on various dates as set forth below it required and/or permitted employees not covered by said agreement to perform data entry clerical work which is reserved to employees covered thereby and then failed to timely decline the claims submitted as a result;

(2) Carrier shall now compensate Mr. T. R. Jensen for eight (8) hours' pay at the time and one-half rate of his position for each of three shifts beginning February 1, 1988, and continuing each and every day thereafter up to and including March 21, 1988."

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 waived right of appearance at hearing thereon.

The Organization alleges that Carrier violated the Agreement when it assigned data entry work in connection with locomotive repairs at Council Bluffs, Iowa to the Motive Power Foreman. Claimant filed three separate claims on March 22, 1988. Sixty four (64) days later, under date of May 25, 1988, the Shop Superintendent denied the claims. Thereafter, the Organization appealed the denial. It argues that Carrier's denial was untimely in violation of Rule 35 (a) which requires an answer within 60 days from the date a claim is filed. The Organization also continued to pursue its claim on the merits.

Carrier initially argues that the usual method of filing claims is to submit the claim to the Storekeeper. In this case, the claim went to the Shop Superintendent. Thus, Carrier urges that the time limits should not have begun to run until the Storekeeper received the claim.

As to the merits, Carrier has submitted numerous arguments in support of its view that the claim is unsustainable.

Without resort to the merits in any way, we conclude that the procedural violation requires that the claim must be sustained. Rule 35 (a) states, in relevant part, as follows:

"The Carrier shall, within 60 days from the date claim is filed, notify whoever filed 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."

This language is clear and unambiguous. Its import is manifest. The failure to respond within 60 days requires the claim be allowed as presented.

We appreciate that the Shop Superintendent may not have been as familiar as the Storekeeper regarding the requirement to answer a claim in a timely fashion. However, our sensitivity to this fact cannot overcome the requirements of the Agreement. This fact does not excuse Carrier from the obligation to deny the claim within 60 days.

Thus, without reaching or commenting about the substance of the claim in any way, we shall sustain the claim.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of May 1995.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 30876

DOCKET NO. CL-30568

NAME OF ORGANIZATION: (Transportation Communications
(International Union

NAME OF CARRIER: (Union Pacific Railroad Company
((former Chicago & Northwestern
(Transportation Company)

This matter has been returned to the Board on the request of the parties for an interpretation. The Board carefully reviewed Third Division Award 30876. The Award sustained the claim of "...Mr. T. R. Jensen for eight (8) hours' pay at the time and one-half rate of his position for each of three shifts beginning February 1, 1988, and continuing each and every day thereafter up to and including March 21, 1988..." because the Carrier failed to respond to the claims within 60 days from the date they were filed in accordance with Rule 35(a).

The Carrier argues that the initial claims filed by the Claimant requested eight hours pay at the straight time rate. When the Organization brought them to the Board, the claims were improperly amended to the time and one-half rate. It is the Carrier's position that inasmuch as the claim for the overtime rate of pay was not handled on the property, the Board was foreclosed from considering it on its merits. In other words, the Carrier now argues that because of its fatal expansion, the claim before the Board had not been handled on the property as required by Section 3, First (I) of the Railway Labor Act and should have been dismissed. In support of its position it cites Second Division Awards 12512, 12062, 9717, 6610; Third Division Awards 29272, 20457; and Fourth Division Award 4893.

Examination of the initial claims indicates that they were, in fact, filed at the straight time rate. The record indicates that the dispute was filed with the Board at the overtime rate on March 26, 1992. Thus, the Carrier is correct that the expanded claim before the Board is not the same as the claims presented on the property. A review of the Carrier's initial Submission to the Board, however, reveals it took no exception to the Statement of Claim as presented to the Board.

There is no question but that our jurisdiction as an appellate body is limited to the claim as handled on the property. The claim handled on the property must be the claim appealed to the Board. Had the Carrier taken exception to the amended claim either in its initial Submission, at the time it was argued on August 6, 1993 or before the Award was adopted on May 10, 1995, the claim may very well have been dismissed. Carrier's argument at this juncture, however, is belated and cannot be considered.

Notwithstanding its belated jurisdictional argument, the Carrier also argues that it already allowed the Claimant \$3,507.84, which it suggests equitably fulfills payment of the Award, because the Claimant would be an improper Claimant on two of the three shifts involved. The Organization maintains that the Carrier owes the Claimant an additional 16 hours pay at the overtime rate from February 1 through March 21, 1988.

It remains the Board's conclusion that the Carrier violated Rule 35(a) when it failed to timely respond to the three claims within 60 days from the date they were filed. The Carrier is liable for its inaction. Because Rule 35(a) provides that a claim which is not disallowed within the time limits "...shall be allowed as presented..." Claimant is entitled to a total of 24 hours pay per day at the straight time rate during the period of February 1 to March 21, 1988, inclusive, less the monies the Carrier has already paid him. This represents the total amount of compensation the Organization sought during the time the matter was pending on the property, as opposed to the total amount of compensation it sought in its March 26, 1992 Notice of Intent to this Board.

Referee Martin F. Scheinman, who sat with the Division as a neutral member when Award 30876 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 29th day of August 1996.