

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30888
Docket No. CL-30997
95-3-92-3-943

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

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
TCU (GL-10904) that:

The following claim is hereby presented to the Company on behalf of the Claimants who are identified as "all clerical employes working at Clifton Park on the second floor during the day shift." (861-91-DH-37).

(a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 1, 27, 49 and other Rules, and Appendix L, when effective May 9, 1991, they put into effect a "Dress Code" for all employes working at Clifton Park on the second floor during the day shift.

(b) Claimants should now each be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.24 per day, commencing March 9, 1991 and continuing for each and every work day thereafter, on account of this violation.

(c) That in order to terminate this claim, the Carrier must rescind the Dress Code.

(d) This claim has been presented in accordance with Rule 28-2 and should be allowed."

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.

In this claim, the Organization contends that Carrier violated Rule 28-2 of the Agreement when it failed to respond to the claim in a timely manner. In its view, the claim should be allowed on the basis of this 60 day time limit violation.

Carrier argues that it did not violate Rule 28-2 of the Agreement. It asserts that the reply to the claim was handled in the customary manner on the property within the time frame provided in the Agreement.

We conclude that the Organization is correct in its assertion that a response to a claim is due within 60 days, as required by the Agreement. However, it is clear from the March 9, 1992 letter from General Chairman H.W. Randolph to General Manager T.F. Waver, that there were ongoing discussions and, at that point, the Organization was still waiting for a response to its claim. Therefore, Claimants are entitled to payment from March 9 to April 7, 1992 (the date of Waver's response to Randolph). However, once denied, payment for violation of time limits cannot be awarded. Therefore, the penalty must be limited to this period of time.

Accordingly, and for the foregoing reasons, the claim is sustained on procedural grounds alone.

As to the merits, the claim is denied. The violation allegedly to have been committed by Carrier is without merit.

AWARD

Claim sustained in accordance with the Findings.

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.