

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31472
Docket No. SG-31768
96-3-94-3-123

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (C&O):

Claim on behalf of W. L. Duncan, J. L. Harvey, A. H. Goins, Jr., D. E. Clinebell, W. R. Meadows, J. W. Furrow, J. A. Willey, S. H. Willey, R. W. Pritt, G. C. Neely and G. E. Lego for:

- A. Payment equal to the amount paid to a contractor for all hours worked by the contractor beginning 60 days prior to November 6, 1992, and continuing for the time that the contractor continued to perform the covered work of cutting brush under the signal pole line on the New River Division.
- B. Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized an outside contractor to cut brush under the signal pole line between Cotton Hill and Sewell, West Virginia, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15-(93-31). General Chairman's File No. 92-51-CD. BRS File Case No. 9325-C&O."

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 filed a claim dated November 6, 1992 alleging Carrier violation of the Scope of the Agreement. Central to that claim letter the Organization stated:

"Contractors were hired to cut brush under the pole line on the New River Division between MA Cabin and Sewell, WV. Between April 1992 and Aug. 1992 we had several signal failures on the New River due to trees and brush shunting and grounding the code, 440, and various other line wires."

The Carrier denied the claim by letter dated February 4, 1993 indicating that "the dates submitted in this claim (April 1992 thru August 1992) are out of time limits...." The procedural issue became paramount on the property when in the Organization's response of March 31, 1993 the claim was formalized to include the period from April to October 2, 1992. The Organization further argued that the wrong Carrier Officer responded, that the Carrier responded in an untimely manner and that under Rule 59, the claim must be "allowed as presented."

This Board carefully reviewed the threshold procedural issues prior to considering the merits. We firmly hold that the claim letter supra, does not state the claim period. No evidence from the Claimants' Report of Extra Time, nor arguments on property of continuing claim or other assertion overcomes this error. The amending of the claim to become specific or the failure of the Carrier to timely respond does not act to overcome the Organization's initial failure to state a claim date or claim period and thereby issue a valid claim to the Carrier.

This Board is precluded from considering the merits or any Carrier failures to properly or timely respond, as the claim was not properly filed in the first instance. As numerous Awards have held, where no valid claim exists ab initio, the Board must dismiss the claim without reaching to further consideration of issues or merits (Third Division Awards 28806, 28560, 27656, 27495, 26549). As that is the circumstance at bar, the claim must be dismissed.

AWARD

Claim dismissed.

Form 1
Page 3

Award No. 31472
Docket No. SG-31768
96-3-94-3-123

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 April 1996.