

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32067
Docket No. SG-32469
97-3-95-3-331**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 to require that Carrier provide appropriate bathroom facilities for employees headquartered at Barboursville, West Virginia, account Carrier violated the current Signalmen’s Agreement, particularly Rule 64(f), when it failed to provide adequate bathroom facilities for such employees. Carrier also violated Rule 59(a) when it did not respond to the Brotherhood’s claim dated August 11, 1993. General Chairman’s File No. 93-55-CD. BRS File Case No. 9601-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 were given due notice of hearing thereon.

Four Signalmen are headquartered at Barboursville, West Virginia. The bathroom in the headquarters building is designated as a women's bathroom, although the fixtures are that normally found in men's facilities. The four Signalmen are required to use bathroom facilities located some 50 to 80 yards away from their headquarters in a different building.

Rule 64(f)(8)(c) reads:

"Headquarters shall be adequately furnished with chairs, desks and lockers, and toilets shall be accessible."

Being unhappy with the arrangements and believing that the above cited Agreement provision required Carrier to provide an accessible toilet in the Headquarters Building, the Local Chairman filed a claim with the Division Engineer by letter dated August 11, 1993 requesting Carrier to make necessary changes to the Headquarters to comply with the Agreement.

Receiving no reply from the Division Engineer, the General Chairman appealed the claim to the Director-Employee Relations by letter dated December 16, 1993 calling attention to Rule 59 (a) reading:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 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 the Carrier as to other similar claims or grievances." (Emphasis added)

The General Chairman concluded his appeal with the statement:

"It seems a suitable solution would be to make the bathroom facility at the Barboursville, WV Bridge Shop available to all employees. A lock on the inside of the door would insure privacy."

The Director-Employee Relations ignored the appeal and made no response, however the record reveals that the Manager of Labor Relations held a conference with the General Chairman on February 23, April 12, June 7 and September 7, 1994, as well as on January 9, 1995.

Satisfactory resolution of the claim was not obtained and as of June 29, 1995, the date the claim was appealed to this Board, there had been no written response to the General Chairman's appeal dated December 16, 1993.

Resolution of this claim must be bottomed on the record of handling on the property and the provisions of the Agreement. This is so for the reason that the Carrier failed to produce a record of any argument it may have made, if any, on the property, and its Submission to this Board cannot be considered by the Board as it constitutes new argument not made a part of the handling on the property. Circular No. 1 of the Board prohibits our consideration of new material and argument.

The procedural argument made by the Carrier is without foundation. The claim filed on the property by the Organization and that filed with the Board are, for all intents and purposes, the same. It requests compliance with the Agreement.

We also find that the Organization handled its claim in the usual manner up to and including Carrier's highest designated officer to receive such claims. The Carrier was obligated by the parties' Agreement to respond in writing if it chose to disallow the claim. It did not, therefore leaving the Organization no alternative but to appeal to this Board.

Awards cited by the Carrier in its Submission lend no comfort to its position on the procedural issues raised. They are based upon facts of record not comparable to those found in this case.

From the record properly before this Board, the Carrier's time limit default is not disputed. This procedural violation by the Carrier leaves this Board no alternative but to sustain the claim as presented as mandated by Rule 59(a) supra.

We cite with favor the observation made in Fourth Division Award 4590:

"The Carrier should take strong note that the time limits issue raised by the Organization is a serious issue for this Board. As stated by the

Board in Third Division Award 25856:

‘The Carrier is cautioned...that under the time limit Rules it is required to respond to Claims within the time limits specified even though it may consider the Claims involved as barred or otherwise defective.’”

While the Board sustains the claim as presented, we are convinced that a fair and rational interpretation of “claim sustained as presented” is that suggested by the General Chairman in his appeal letter of December 16, 1993, reading:

“It seems a suitable solution would be to make the bathroom facility at the Barboursville, WV Bridge Shop available to all employees. A lock on the inside of the door would insure privacy.”

AWARD

Claim sustained.

ORDER

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 June 1997.