

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32130
Docket No. SG-32654
97-3-95-3-587**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of J. J. Caudill for payment of the skill differential of \$.65 per hour for all hours outside of his regular hours performing work such as preparing reports and lining up the work of the Signal Gang, including all 'accumulative' hours, beginning August 1, 1994 and continuing for the term of the violation, account Carrier violated the current Signalmen's agreement, particularly Agreement No. 15-168-93, when it denied payment of the differential for those hours. Carrier also violated Rule 54 when it failed to notify the General Chairman of its disallowance of the claim within the time limits. Carrier's File No. 15(95-90). General Chairman's File No. 94-208-27. BRS File Case No. 9657-L&N."

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.

This claim seeks payment of a \$.65 per hour skill differential under Agreement No. 15-168-93 for Claimant for all hours outside his regular hours performing certain work. The claim—designated as a “‘continuous claim’ starting with the first day of August, 1994”—was dated October 26, 1994. The claim was discussed in conference on January 10, 1995. The Organization appealed on January 17, 1995. On March 6, 1995, the Carrier denied that appeal in writing stating reasons for the denial.

The case has several problems. First, Agreement No. 15-168-93 does provide for payment of a differential. However, under Section 1.3 of that Agreement “[t]he differential is applicable only to the time actually worked by an employee” [emphasis added]. The Organization therefore bears the burden to show “the time actually worked by an employee.” This record does not contain such a showing.

The second problem with this case is that the Carrier did not timely deny the claim. Rule 54 states that “[s]hould any such claim or grievance be disallowed, the Carrier 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 the such disallowance. If not so notified, the claim or grievance shall be allowed as presented.” The continuing claim from August 1, 1994 is dated October 26, 1994 and was not denied by the Carrier in writing with reasons until March 6, 1995—clearly beyond the 60 day time limit specified in Rule 54.

Thus, the Organization has a burden to show under Section 1.3 of Agreement No. 15-168-93 that there was “time actually worked” by Claimant. That is something the Organization did not do. On the other hand, while it is understood that after the claim was filed and progressed, it was not really clear precisely what theory for relief was being pursued by the Organization, nevertheless, under Rule 54, the Carrier was obligated to deny the claim in a timely fashion. That is something the Carrier did not do.

Given the above, this Board shall sustain the claim, but only for the period August 1, 1994 through March 6, 1995. See Third Division Award 26239 and Awards cited

therein ("It is well established that a late denial is effective to toll the Carrier's liability for a procedural violation as of the date of that denial. From the date of the late denial, disputes are thereafter considered on their merits."). The Carrier's liability shall toll as of the date of its late denial—March 6, 1995. Because the Organization did not meet its burden to show "time actually worked", the claim shall be denied after March 6, 1995.

We have considered the Carrier's cited authority standing for the proposition that the Organization cannot bootstrap an otherwise procedurally defective claim through the argument that a carrier did not meet a procedural requirement for denying the claim. See Third Division Awards 29894, 29581, 29197, 28922, 28806, 28560, 28121, 27656, 27495, 26549; Second Division Award 8294. This claim was clearly a continuing claim which, because of payroll delay periods, did not become apparent immediately upon the date the claimed differential was not paid.

AWARD

Claim sustained in accordance with the Findings.

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 13th day of August 1997.