

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32477
Docket No. CL-32913
98-3-96-3-278

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11219) that:

1. Carrier violated the Agreement on June 3, 1992, when it permitted Beverly Lancaster, an employee with Textron Aerostructures, who is not covered by the Agreement, to issue wire to CSX Transportation relative to movement of CSXT 603890.
2. As a result of its action, the Company shall compensate Clerk W. E. Pons for eight (8) hours' pay at the rate of Position No. 159 for June 3, 1992, to be continuous until this work is returned to the clerical craft."

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.

*mentioned in Statement
of claim - claim
dismissed. Bd has
no authority to*

Parties to said dispute were given due notice of hearing thereon.

This claim arises out of Carrier's action in allegedly permitting an employee of Textron Aerostructures to perform work covered by Agreement; it is before the Board solely on the timeliness issue arising out of Carrier's failure to respond to the initial claim within 60 days of the date the Organization contends the claim was submitted.

The essential facts are these: On June 3, 1992, Beverly Lancaster, an employee of Textron Aerostructures, issued a wire to CSX Transportation regarding the movement of CSXT 606890. On July 20, 1992, District Chairman W. E. Pons addressed a claim to Nashville Trainmaster-TSC W. P. Davis demanding eight hours pay for that and each subsequent such incident. Because Davis was in the process of transferring to Jacksonville, however, Pons asserted that he hand-delivered the claim to J. H. Baker, Manager, Field-CSO at Nashville and Davis' replacement, on the assumption Baker would assume responsibility for responding or forwarding the grievance to Davis for reply. Copy of the claim was provided to B. L. Kelsey, Terminal Superintendent at Nashville.

When no response was received, Pons again wrote to Davis advising that the July 20 claim had not been answered in accordance with Rule 36. By letter dated December 7, 1992, Davis rejected the claim, informing Pons that "[a]s of this date, no supervisor with the Nashville TSC has been presented these claims. Therefore this claim, as presented, has been found to be without merit and respectfully declined."

The controlling Rule is Rule 36 - Time Limit, which appears in the Agreement between the Carrier and the Organization effective November 1, 1982:

"(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 sixty (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 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 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."

The Organization contends that the claim should be allowed as presented in view of the Carrier's failure to respond on a timely basis. The Carrier advances several opposing arguments, chiefly that the Organization's failure to raise the timeliness issue in its Statement of Claim bars its review by the Board, and that the Organization failed to bear its burden in establishing that the claim was ever received by the Carrier.

As an initial matter, the Board notes that although this particular timeliness issue post-dated the claim, the Organization's position on the question was argued repeatedly in the case handling on the property, including in its appeals of November 10, 1992, December 7, 1992, January 14, 1993, and January 26, 1993, although it was not recited in its Submission. Thus, the time limits issue can hardly come as a surprise to the Carrier, and the Board's strong preference normally would be to look askance at the technical argument and address the effect of the Carrier's failure. In that case, because Rule 36 confers no authority to consider the validity of the underlying claim if we find that the Carrier failed to abide by the time limits of the Agreement - and because the Carrier obviously cannot be required to respond to a claim it never received - resolution of the fact question concerning whether the claim was submitted and received is the threshold issue.

It is at this juncture that the dragon grows a head. Both parties submitted Third Division Awards for our review which address the effect of failure to incorporate a timeliness issue in the Statement of Claim. We carefully reviewed each of them. In brief, one of the three Awards submitted by the Organization is a relatively old decision clearly supporting the position that when the time limit issue is handled on the property in the usual manner, failure to raise it in the Statement of Claim does not require the Board to dismiss the case. The other two are conclusory opinions favorable to the Organization, but containing no rationale. In both, although the timeliness question was not presented in the Statement of Claim, that defect does not appear to have been an issue argued at Board level. In any event, although the procedural defect was not raised in the Statement of Claim in either case, the effect of that omission on Board jurisdiction is not discussed in either case.

We believe the significant number of contrary decisions proffered by the Carrier (one authored by the same Referee who sustained the Organization's position in one of the three above cases, based on indistinguishable facts) represent the better weight of authority on this issue and establish convincingly that the Board has no power to consider issues which go beyond the Statement of Claim. As succinctly stated in Third

Division Award 4867, "Under the provision of the Railway Labor Act and the Rules of Procedure of this Board, the party presenting a dispute 'must clearly state the particular question upon which an award is desired.' When that is not done in the Statement of Claim as presented to this Board, we would be exceeding our jurisdiction by considering arguments which go beyond that Statement of Claim."

Based upon our careful consideration of what appears to be the better weight of Third Division precedent, inasmuch as no reference was made to the alleged time limit violation in the Statement of Claim submitted to the Board, we conclude we have no jurisdiction to consider that issue. We therefore dismiss the claim for lack of jurisdiction.

AWARD

Claim dismissed.

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 23rd day of February 1998.