

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32806
Docket No. SG-33819
98-3-97-3-305**

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

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

STATEMENT OF CLAIM:

“Grievance on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Grievance to require the advertisement of the Lead Signalman position on System Gang 7X44, account Carrier violated the current Signalmen’s Agreement, particularly Rules 46 through 50, when it left the Lead Signalman position vacant for more than 30 days without advertising the position. Carrier also violated Rule 54 when it failed to provide notice of the disallowance of this grievance within the time limits. Carrier’s File No. 15(96-137). General Chairman’s File No. 96-Grievance-01. BRS File Case No. 10186-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 dispute involves a claim by the Organization contending violation of Rules 46 through 50, account Carrier's failure to advertise and fill the vacant Lead Signalman position on System Gang 7X44 filed with Carrier on February 1, 1996.

Carrier failed to respond to the claim, and on May 9, 1996, the Organization advised Carrier that its failure violated Rule 54, Time Limits for Handling Claims, which reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe 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 employe 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)

and called upon the Carrier to allow the claim as presented.

Carrier responded by letter dated July 5, 1996, denying the claim, but making no comment concerning its failure to respond within 60 days to the initial claim of February 1, 1996.

On the basis of the on-property record of handling, we conclude that the procedural violation requires that the claim be allowed as presented because the language of Rule 54(a) is clear and unambiguous. In reaching this decision, the Board makes no comments regarding the merits of the claim.

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 23rd day of September 1998.