

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33915
Docket No. SG-33959
00-3-97-3-427**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Long Island Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Claim on behalf of D.P. Hamma, et al., for payment of the difference between the time and one-half rate and the double time rate for all time in excess of 16 hours during the 24-hour period beginning with the start of their regular assignments on November 14, 1995, account Carrier violated the current Signalmen’s Agreement, particularly Rules 40 and 42, when the Claimants were instructed to suspend work on their regular assignments on November 14, 1995, and not paid at the double time rate for the time in excess of 16 hours. Carrier’s File No. SG-27-95. BRS File Case No. 10332-LI.”

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.

The Claimants in this matter were Signal Department employees with a regular assignment between 7:30 A.M. and 3:30 P.M. each day. On November 14, 1995 they were at work during that regular assignment when some were instructed to suspend their work at noon while others were told to do so at 12:30 P.M. Later they were instructed to return for duty at 8:00 and 8:30 P.M., respectively, in anticipation of an impending storm. Once the two groups reported as instructed, they worked for 12 hours. The Carrier paid the Claimants eight hours at straight time, 12 hours at time and one-half and another eight hours of straight time pay for the suspended time on November 15, 1999.

The Organization contends that the Carrier violated Rules 40 and 42 because it did not pay the Claimants, as required by Rule 40, double time for "... time worked in excess of 16 hours in any 24 hours period. . ." and because it suspended their work on the two days in question in order to "absorb" overtime on the evening of November 14, 1995 as prohibited by Rule 42. The Carrier on the other hand contends that the claim is untimely and that, if it is not, there is no merit to the claim.

The Carrier points out that Rule 50 requires that initial claims be filed within 60 days of the occurrence and that any appeal to the Board from a declination by the Carrier must be filed within nine months of the denial. It further contends that the Organization's claim must fail on two counts. Upon review we agree with the Carrier, but only in part. The record shows that there is a United States Postal receipt from the Carrier for the original claim dated July 11, 1995. Thus, the initial claim is well within the time period for filing. Moreover, even if we use the date alleged by the Carrier, January 16, 1997, the claim is at best only two days late and Rule 50 provides for no penalty in the event that a claim is not timely filed.

On the other hand however Rule 50(c) not only provides for the time period within which a matter must be appealed to this Board but also provides that "... all claims . . . shall be barred unless within nine months from the date of decision proceedings are instituted . . . before the appropriate division of the National Railroad Adjustment Board." (Emphasis supplied) The record shows that on July 24, 1996 the highest designated official of the Carrier advised the Organization that the claim was denied. The Organization responded by letter of March 31, 1997 that it intended to pursue the matter before the Board and it filed with the Board on May 30, 1997. Because neither effort was within the nine month period following the declination, which ended on March 24, 1997, the claim must, as the parties agreed in Rule 50(c), be barred.

Form 1
Page 3

Award No. 33915
Docket No. SG-33959
00-3-97-3-427

AWARD

Claim denied.

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 24th day of January, 2000.