

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37285
Docket No. SG-36835
04-3-01-3-403**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of D. H. Kuhns, J. Zurick, Jr., L. R. Leister, R. D. Hall, G. K. Caldwell, W. R. Dellinger, A. P. Gall, R. C. Strickler, W. B. McCune, and R. K. Romesburg for payment of all time worked by System Construction Gang No. 7X15. This amount should be divided equally among the Claimants. Account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement No. 15-18-94, when beginning on April 16, 2000, and continuing through May 22, 2000 Carrier assigned System Signal Construction forces to work with the tie and resurfacing gang on the Claimants' assigned seniority district. This action deprived the Claimants of the opportunity to perform this work. Carrier also violated Rule 54 by failing to respond to the initial claim. Carrier File No. 15 (00-0194). BRS File Case No. 11731-B&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.

On May 22, 2000, the Organization filed a claim on behalf of the Claimants, arguing that the Carrier violated the parties' Agreement when, during the period of April 16 through May 22, 2000, it used System Signal Construction Gang 7X15 to follow Maintenance of Way tie and surfacing units on the Pittsburgh East End Territory and make necessary repairs to any signal equipment damaged by them in connection with their work, in that such work previously had been performed by local forces.

The Organization asserts that the Carrier compounded its initial violation by completely ignoring the time limit provision of Rule 54. The Organization points out that it sent the original claim by certified mail and the Carrier received it on June 2, 2000. The Carrier does not dispute that it did not respond to the claim, but instead defends its inaction in its November 9, 2000 response by asserting that it did not need to respond to the claim because it lacked merit. The Organization argues that the Carrier was required, under Rule 54, to respond to its concerns whether or not the Carrier believed the claim had merit. Because the Carrier failed to respond within the 60-day time limit, the Organization asserts that the instant claim must be allowed as presented.

According to the Carrier, when a claim is void ab initio, a board of arbitration may not even consider an alleged time limit violation. The instant claim therefore should be dismissed without regard to the merits.

The record reveals that the original claim was filed on May 22, 2000. The Organization contended that the Carrier had violated the Agreement between April 16 and May 22, 2000. In a subsequent letter dated September 25, 2000, the Organization notified the Carrier of its failure to respond to the Organization's claim. The Organization asserted that pursuant to Rule 54, the claim must be allowed as presented because the Carrier failed to respond to the claim within 60 days.

Rule 54 states:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer authorized to receive same,

within sixty days from the date of the occurrence on which the claim or grievance is based. Should any claim or grievance be disallowed, the Carrier shall, within sixty 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 similar claims or grievances."

The record is clear that the Carrier failed to respond to the claim within 60 days as required by Rule 54. Consequently, the Board finds that the claim must be allowed as presented. Accordingly, the 11 Claimants are entitled to the monetary award requested in the claim. Those monetary damages should be divided equally between the Claimants. Those monetary damages should consist of the payments that were made to System Signal Construction Gang 7X15 for the work with the tie and surfacing gang that occurred between the claim dates of April 16 and May 22, 2000.

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 17th day of November 2004.