

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37767  
Docket No. CL-38228  
06-3-04-3-183

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

PARTIES TO DISPUTE: (Transportation Communications International Union  
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13035) that:

- (1) Carrier violated the TCU Contract by calling outside parties (PTI Taxi) to haul crews to and from and around Milan Yard, Fayetteville, North Carolina. These five (5) claims are for work that was done only by Clerks up until the first-shift Chief Clerk's job was abolished.
- (2) Carrier shall now be required to compensate Clerk N. A. Ray at the rate he would have earned if called properly.
- (3) Carrier further violated the Agreement when it failed to comply with the provisions of Rule 37 by not timely responding to the claim; therefore, this claim is now payable in the amount claimed.”

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.

Our review of the record developed on the property reveals that the parties joined the customary Scope Rule coverage and reservation of work issues that are normally seen in claims involving the contracting of work. Before the Board, the Carrier also raised certain additional issues, such as the procedural validity of the Organization's belated attempt to amend the claims upon appeal to request a monetary remedy. Unfortunately, we may not consider such additional issues because they were not raised on the property. It is well-settled that new evidence and/or argument may not be presented for the first time on appeal to the Board.

The Organization asserted that the Carrier procedurally defaulted on the claims under Rule 37 by not responding to them in a timely manner. Upon careful review of the on-property record, we are compelled to agree with the Organization's contention.

The record establishes that the Trainmaster at Milan Yard receipted for the five claims on February 22, 2003. When no Carrier response was received by June 2, 2003, the Organization advanced the claims to the next level and asserted the procedural default at that time. The Carrier did not respond until October 16, 2003 after conferencing the claims on September 10. According to the Carrier, the claims were void ab initio because they had not been filed with the proper officer designated to receive them.

On February 4, 2004, the Organization replied that the claims had been "... presented to and accepted by the officer who had been designated by the Carrier in its last known notification to this office." The Organization's letter went on to contend that, if the Trainmaster was not the proper officer to receive the claims, he had a responsibility to forward them to the proper officer. Neither of these assertions was effectively refuted by the Carrier during the handling of the claims on the property.

It is well-settled that objections to alleged procedural irregularities of a non-jurisdictional nature must be raised at the earliest opportunity to do so or they are deemed to have been waived. It was incumbent upon the Trainmaster, therefore, to

object to the claims at the time that he received them if he was not the properly designated officer to do so. The record contains no proof of any objection by him. Accordingly, any Carrier objection to the validity of filing the claims was waived. Moreover, the fact that the Trainmaster did not manifest any objection to receiving the claims actually provides corroboration for the Organization's assertion that there had not been any proper notification of a change in designated officer. In addition, if the Carrier had, in fact, notified the Organization of such a change in designated officers, such was an affirmative defense for which the Carrier had the burden of proof to establish proper notification. No such proof is in the record.

Given the foregoing circumstances, we must recognize the procedural default committed by the Carrier. That said, however, at the time that the claims went into default for lack of a response, they did not seek any monetary remedy. Indeed, the Organization did not attempt to amend the claims to request a 2 hour and 40 minute call at the time and one-half rate until its appeal dated February 4, 2004. This was some ten months after the claims were already in default. At this point in time, it was too late to amend the claims that were already fixed by default. Accordingly, we sustain the claims only insofar as they are in default. We do not provide any monetary remedy for the default because none was sought at that time.

#### 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 25th day of April 2006.