

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38122
Docket No. CL-38178
07-3-04-3-104**

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

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13030) that:

- 1. The Carrier violated the terms of the Agreement, specifically Rule 13 of the General Agreement and the revised 407 Transfer Agreements dated April 1, 1998 and October 5, 2002, and all amendments and revisions thereto, on January 17, 2003, when it failed or refused to award Clerk G. M. Hornsby, ID #202654, Position No. 0170-154, with an effective date of January 20, 2003, and assigned to Seniority District No. 13, in lieu of awarding the position to junior Clerk S. Y. Johnson.**
- 2. As a result of this violation, the Carrier shall now be required to compensate senior employee G. M. Hornsby, ID #202654, the daily difference of what she earned and the rate of the position held by Clerk S. Y. Johnson, beginning on January 20, 2003, the effective date of the assignment, and continue for each day she is not assigned to this position.**
- 3. The Carrier shall also be required to compensate Clerk G. M. Hornsby the difference in what she earns and the time and one-half rate for each day she performs service on the rest days of the Position No. 0170-154, beginning on January 20, 2003, and continuing until this violation is corrected.**

4. The Carrier shall also be required to compensate Clerk G. M. Hornsby at the straight-time rate of Position No. 0170-154 on the rest day or days she did not perform service (at no fault of her own) that Position No. 0170-154 is assigned to work, beginning on January 20, 2003, and continuing until this violation is corrected.
5. In addition, the Carrier shall also be required to compensate Clerk G. M. Hornsby the difference in what she earned and the time and one-half rate of pay when she performed service outside the assigned hours of Position No. 0170-154 beginning on January 20, 2003, and continuing until this violation is corrected. Thus, the Carrier is placed on notice to retain such records until this claim is resolved."

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.

As the Board understands this claim, it appears that there are four different seniority districts involved. At the time this dispute arose, Claimant G. M. Hornsby was assigned to Guaranteed Extra Board Position No. 0187-999 at Waycross, Georgia, on SCL Seniority District No. 6. Data Coordinator Position No. 0170-154 in the Purchasing and Materials Department on Seniority District No. 13 became available in Jacksonville, Florida, account no bids received. Although Claimant Hornsby submitted a 407 Transfer bid for the Data Coordinator position at Jacksonville on January 15, she was passed over and ultimately transferred to a position on Seniority District No. 18. Junior Clerk S. Y. Johnson was awarded the Data Coordinator position on January 20, 2003. (Because Johnson had been displaced and she was the most junior clerical

employee on Seniority District No. 25, which had no other positions available, she elected to exercise her seniority to SCL Seniority District No. 13 under the provisions of Rule 8.)

This scenario led TCU District Chairman Alvin L. McCombs to submit the Organization's claim on behalf of Claimant Hornsby to General Director M. E. Downey in Jacksonville on February 24, 2003. Director Manpower and Administration Lucy Bafford reviewed the claim and in a letter dated March 17, 2003, concluded that Claimant Hornsby was only "... entitled to the difference of rate of pay (\$3.80) for the period of January 20th, 2003 through March 5, 2003, excluding weekends." Bafford indicated that the total amount of \$125.40 would be placed in line for payment as settlement for the entire claim. Bafford's settlement offer was not accepted by the Organization.

In his June 19, 2003 rejection of the Organization's appeal, Senior Director Labor Relations James C. Amidon asserted that first level officer Bafford's settlement offer was made in error. More important, he asserted that TCU District Chairman McCombs erred when he initially filed the claim with the wrong Carrier officer. Amidon stated that not only was Downey not the designated Carrier officer for Seniority District No. 6, where Claimant Hornsby was working during the claim period, but also McCombs, who represented Seniority District No. 18, filed the claim outside his territorial jurisdiction.

In its response, the Organization asserted that no procedural error had been committed. Although it acknowledged that Downey had no jurisdiction on Seniority District No. 6, it nevertheless contended that the claim was not for Seniority District No. 6, but Jacksonville, where "Ms. Downey accepted the claim and responded." It is significant to note that by letter dated February 24, 2004, the Senior Director Labor Relations again disputed the Organization's position and stated in pertinent part:

"The Carrier takes exception to your statement that Ms. Downey was the proper officer [with whom] to file this claim. The position Clerk Hornsby claimed is not on SCL District 18. Ms. Downey was the designated official on SCL District 18 . . . The correct officer should have been either Danny Clark, Seniority District #13, or Gerry Boykin, Seniority District 6, as officers for the two districts involved in this claim. Rule 37 states that claims and grievances must be presented in writing to the designated officer. In this case, Ms. Downey was not the

designated officer. As a result, this claim is procedurally defective and fatally flawed. The union representative cannot file the claim where he works, but must file to the designated officer where the alleged violation took place. Clearly District 18 was never involved in this issue whatsoever.”

In light of the above, the Board carefully reviewed the on-property record, with particular attention being paid to the alleged procedural error. Preliminarily, we first note that we cannot reach the merits of the alleged violation of Rule 13 and the 407 Transfer Agreements, or consider other serious issues, if a procedural violation in fact occurred. Second, Rule 37 governs the claim handling process on the property. Third, the Carrier argued on the property that the designated Carrier officer did not receive the initial claim.

Rule 37 includes clear and unambiguous language that requires claims to be presented to “the officer of the Carrier authorized to receive same.” As noted above, the Claimant, who was working on SCL Seniority District No. 6 at Waycross, Georgia, submitted a 407 Transfer bid for a position that went no bid on SCL Seniority District No. 13 at Jacksonville, Florida. The Carrier argued that the initial claim was fatally flawed because the designated Carrier officer to receive the claim could not be an officer on Seniority District No. 18, where the claim was submitted and acted upon. Stated differently, the Carrier argued that the claim was void ab initio.

It is significant to note that the Organization failed to effectively refute the Carrier’s procedural argument as set forth in its letter dated February 24, 2004. As such, there is no evidence of record that the Organization had the Agreement right to submit its claim to General Director Downey on Seniority District No. 18. Accordingly, the Carrier’s unrefuted assertions stand as fact. Because the Organization failed to file its claim in accordance with Rule 37, the Board cannot reach the merits and is constrained to dismiss the claim.

AWARD

Claim dismissed.

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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 15th day of March 2007.