

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39029
Docket No. MW-37802
08-3-NRAB-00003-030161
(03-3-161)

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Track Inspector R. L. Johns for overtime track inspection service on January 1, 2002 and instead called and assigned junior employee P. W. Mitchell [System File I59114802/12(02-0313) CSX].
- (2) The claim as presented by Vice Chairman L. C. Smith on February 14, 2002 to Regional Engineer K. L. Johnson, Jr. shall be allowed as presented because the claim was not disallowed in accordance with Rule 24(a).
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimant R. L. Johns shall ‘. . . now be compensated, at the appropriate Track Inspector time and one-half rate, for sixteen (16) overtime hours, account the Carrier’s use of the junior employee.’”

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 instant claim involves the influence of a vacation period on the priority for the assignment of holiday overtime work. The basic facts of the claim are not in dispute. A derailment in the vicinity of Decatur, Alabama, required the inspection of several miles of track on January 1, 2002. The Claimant was observing a vacation period immediately prior to this date. His first scheduled work day after his vacation period was to be January 2, 2002.

The Carrier's position is that he was not considered to be available for assignment until January 2, 2002. It both cited and quoted from Third Division Award 31790 in support of this contention on the property. The contention was not refuted by the Organization. For its position, the Organization contended that the Carrier had the right to call employees in from their vacation to perform work. This was not refuted by the Carrier.

Despite the foregoing brief description of the merits of the instant dispute, the Organization contends that a default award in its favor is warranted because of the Carrier's failure to comply with the 60-day time limit in which the Carrier was required to respond after the claim was filed. In considering this procedural issue, we confined our analysis, as we must, to only the evidence and argument that was exchanged during the development of the on-property record. Accordingly, all new material in the Organization's Submission has been disregarded.

Although the claim letter bears the date of February 14, 2002, the Carrier asserted in its initial denial that the claim was received on February 17, 2002. This was not refuted by the Organization on the property. The Carrier also cited Second Division Award 9336 to support its contention that the claim could not have been "filed" before the date that it was received. The Carrier also cited Award 7 of Special Board of Adjustment No. 1110 in support of its contention that the "filing" date of the claim was February 17, 2002. It is undisputed that the Carrier's denial was dated April 15, 2002 and was also postage metered that date, but was not cancelled by the postal service until April 16, 2002.

Rule 24(a) of the parties' Agreement imposes a 60-day response time limit from the date a claim is "filed" in writing. Moreover, it is clear that a postmark date is controlling only for time limits under sub-parts (b) (c) and (d) of the Rule but not sub-part (a). Under the circumstances, we find that the instant claim was not filed until February 17, 2002. Accordingly, the Carrier's response was timely.

Turning to the merits, we note that the Organization bases its claim on Rule 17 Section 1 which dictates the preference order for overtime work "... outside the normal tour of duty. . . ." The Organization admitted in its May 4, 2002 appeal letter that the claim date was a holiday and that no one "... was regularly assigned to work. . . ." Moreover, as previously noted, the Organization did not effectively refute the Carrier's assertion, which was supported by Third Division Award 31790, that the Claimant was not considered to be available for an assignment until January 2, 2002 due to his observation of a vacation period.

Given the foregoing discussion, we find that the Organization has not satisfied its burden of proof to establish a violation of the Agreement as alleged.

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 22nd day of April 2008.