

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39849
Docket No. CL-40414
08-3-NRAB-00003-080240**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

**“Claim of the System Committee of the Organization (GL-13198)
that:**

- (1) By letter dated March 28, 2005 and delivered by FedEx Express (Exhibit “A”) on April 1, 2005 the Organization requested from the Carrier where the resultant duties of abolished position CT-600 were being distributed.**
- (2) After waiting a reasonable amount of time and not receiving a reply it is evident the Carrier does not intend to fulfill its obligation and the Organization is therefore, forced to submit this grievance for remedy.**
- (3) And, the Organization further requests on behalf of Penni Rickey a claim for 8 hours compensation for each day beginning March 9, 2005 and continuing until this dispute is settled.”**

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.

Claimant P. Rickey, with a seniority date of October 27, 1998, was regularly assigned to position CT-600 and was scheduled to work from 7:00 A.M. to 3:30 P.M., Monday through Friday, with a rate of pay of Wage Grade 10. The Claimant's position was located in Providence, Rhode Island, and was the only clerical position at this location. On March 8, 2005, said position was abolished and the work was transferred to Wilmington, Delaware. On March 28, 2005, the Organization corresponded with the Carrier to inquire about the assignment of the duties of position CT-600. According to the Organization, the Carrier did not respond to the Organization's inquiry, which led to the instant claim that was filed on May 30, 2005.

The Organization contends that the Carrier violated the Agreement when it did not respond to the Organization's request for information. According to the Organization, the Claimant's position was abolished on March 8 and on March 28, 2005, the Organization made an inquiry to ascertain where various duties had been transferred. This inquiry received no response. As a remedy, the Organization requests that the Claimant be compensated for eight hours for each day beginning March 9, 2005 and continuing until the matter is resolved.

Conversely, the Carrier contends that it acted properly in this matter. According to the Carrier, the Claimant's position was abolished on March 8 and the instant claim was not filed until May 30, 2005 (approximately 83 days later) far in excess of the 60 days in which a claim must be made. In addition, even if the claim was not untimely, it is nonetheless void on its merits because the abolishment of the Claimant's position complied with all relevant contractual requirements. Because the burden of proof is on the Organization, the Carrier contends that the Organization cannot meet its burden of proof. The Carrier contends that it acted

appropriately and asks that the claim be dismissed on procedural grounds, or in the alternative, denied on its merits.

After a review of the evidence and positions of the parties, the Board finds that the matter was untimely initiated. A review of the evidence shows that the Claimant's position was abolished on March 8 and the instant claim was not filed until May 30, 2005 (approximately 83 days later). This is clearly outside of the 60-day requirement for which a claim must be filed, as set forth in Rule 7-B-1. Because the claim was untimely initiated, it is dismissed.

AWARD

Claim dismissed.

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 31st day of July 2009.