

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39957
Docket No. MW-40617
09-3-NRAB-00003-080493**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

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 Flagman Foreman G. Ramirez for overtime flagging service on the San Francisco Yard on April 28 and 29, 2007 and instead called and assigned junior employee D. Rosales to said overtime service on April 28, 2007 and junior employee G. Duarte to said overtime service on April 29, 2007 (Carrier’s File BMW-544 NRP).**
- (2) The claim* as presented by General Chairman L. Below on May 17, 2007 to Division Engineer C. Sheppard shall be allowed as presented because said claim was not disallowed by Division Engineer C. Sheppard in accordance with Rule 14.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant G. Ramirez shall now be compensated for twenty-two and one-half (22.5) hours at his respective time and one-half rate of pay.**

***The initial letter of claim will be reproduced within our submission initial submission.”**

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 17, 2007, the Organization filed with Division Engineer C. Sheppard a claim on behalf of the Claimant alleging violations of Agreement Rule 11 when, on April 28 and 29, 2007, employees junior to the Claimant were called for overtime. The claim requested that the Claimant be compensated for 22 and one-half hours at his overtime rate.

Division Engineer Sheppard never responded to the claim. However, by letter dated June 5, 2007, Senior Engineer Track and Structures D. Brown purported to deny the claim. The Organization urges that in accordance with Agreement Rule 14, the claim must be sustained as presented.

Rule 14(1) provides:

“All claims or grievances other than those involving Discipline must be presented in writing by, or on behalf, of the employee(s) involved, to the supervisor within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the supervisor shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or the representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented.”

The Carrier asserts that it complied with Rule 14. In support of its position, the Carrier cites Second Division Award 10086 and Third Division Award 20790. We reviewed these Awards carefully and concluded that they do not control the instant case. In Second Division Award 10086, the Agreement provided in relevant part:

“Should any claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance . . . in writing of the reasons for such disallowance.”

The Organization argued that because a Carrier official other than the official with whom the claim was filed responded to the claim, the claim had to be sustained as presented. The Board rejected the argument, reasoning:

“A careful reading of the above language suggests that there is no violation of the rule. Rule 33 places a burden on the employee to present the grievance or claim to a particular, authorized Carrier officer. By contrast, the rule does not require that the same officer give written notice of disallowance of a claim. The rule merely requires that ‘the Carrier’ provide such notification.”

Third Division Award 20790 did not quote the language of the applicable Rule - the Board merely stated:

“The instant claim is based on the premise that Carrier was precluded from disallowing the Claim by any representative other than the officer who was authorized to receive the claim. The controlling agreement does not so restrict carrier.”

In contrast to Second Division Award 10066 and Third Division Award 20790, Rule 14 does not merely state that the Carrier must notify the party who filed the claim of the reasons for its disallowance, but specifies that the Supervisor must do so. It similarly specifies that the claim must be filed with the Supervisor. When the Agreement specifies a particular Carrier Officer who must notify the party who filed a claim of the claim’s disallowance, failure of that specific officer to make the notification constitutes a default even if another individual purports to deny the

claim. See Third Division Award 22710. Accordingly, the claim must be sustained as presented.

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 30th day of September 2009.