

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40914
Docket No. SG-41211
11-3-NRAB-00003-100069

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Illinois Central Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of all Signal Foremen, for the removal of the additional requirement that they are to possess a Class A Commercial Drivers' License (CDL), when the Carrier violated the Agreement, in particular Rule 2(b), Working Agreement Addendum-Class A Commercial Drivers' License and Article XIV - General Provisions, when on August 20, 2008, it issued a letter requiring all Signal Foremen to possess a Class A Commercial Drivers' License. Carrier's File No. 2008-00009. General Chairman's File No. IC-010-08. BRS File Case No. 14308-IC.”

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.

Both parties advanced a procedural objection calling for an award in their favor. Some information about the historical background of the dispute is warranted to explain the reasons for the Carrier's objection.

By letter dated November 22, 2005, the Carrier initially imposed a requirement that all Signal Foremen possess a Commercial Drivers Licence (CDL) to be qualified to hold the position. The Organization challenged the requirement then by a claim filed on December 12, 2005, and the dispute was advanced to the Board by Notice of Intent dated March 15, 2007. There it remained. Some seven months later, on October 3, 2007, the parties signed a new Agreement pursuant to their Section 6 openers. Side Letter No. 4 of that Agreement provided that all pending non-disciplinary disputes would be ". . . considered resolved without prejudice to the position of either party. . . ."

On August 20, 2008, the Carrier reissued the CDL requirement and attached the original November 22, 2005, letter to the announcement. In response, the Organization filed the instant claim dated September 22, 2008.

Rule 34 of the parties' Agreement requires the Carrier to respond to the claim within 60 days. Failing compliance with the time limit, then the Rule requires that the claim ". . . shall be allowed as presented . . ." without setting a precedent for any future similar matters.

The Carrier's initial response to the claim was undated. Nor did it state the date on which the claim was received. However, the envelope in which the response was mailed bears a postmark date of November 24, 2008. This postmark was the 63rd day after the date of the claim.

In its appeal from the Carrier's denial response, the Organization raised the time limit objection. Thereafter, the Carrier asserted that its initial response was postmarked before expiration of the time limit. In addition, the Carrier contended that the instant claim was void ab initio by virtue of Side Letter No. 4 even if it failed to comply with the time limit.

A resolution of a dispute ". . . without prejudice to the position of either party . . ." is really a postponement and not a permanent disposition. Each party

essentially retreats to its pre-dispute position and retains the right to advance its position again in the future. Therefore, on the record before the Board, the Organization retained the right to challenge the Carrier again whenever the Carrier sought to again impose the CDL requirement. The Organization's claim was no less valid than the Carrier's renewed attempt to impose the requirement. Accordingly, the Carrier's procedural objection must be rejected.

With regard to the Organization's time limit objection, we are confined to the facts of the record developed by the parties on the property. Those facts show the claim was dated September 22, 2008. The postmark date of November 24, 2008, on the envelope enclosing the Carrier's undated response was more than 60 days after the date of the claim. Given the explicit text of Rule 34, we are compelled to find that the self-executing Rule must be applied as written. The claim, therefore, must be allowed 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 10th day of March 2011.