Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41092
Docket No. MS-41419
11-3-NRAB-00003-100335

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

PARTIES TO DISPUTE: (J. S. Miles, Jr.
(
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"1. Claiming 6 days overtime pay at the rate of Savannah, Ga. General Clerk's position 4J10-173 account the carrier violated Rules 12, 18(f), 19(h), and 20(f), as well as others, of the SCL/TCU clerical collective bargaining agreement, when on the dates of March 22, 29, April 5, 12, 19, and 26, 2009, all Sundays, the carrier called an unqualified guaranteed extra board employee, A. B. Colson, ID XXXXXX, who had not observed his two unassigned, not-necessarily-consecutive rest days during his workweek, to protect the Sunday "tag" rest day of employee J. S. Miles, Jr..

2. The carrier shall now be required to pay claimant J. S. Miles, Jr., ID No. XXXXXX, 6 days pay at the overtime rate of $281.91 per day, totaling $1,691.46, for the above mentioned violations."

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 dispute raises the issue of whether the Carrier violated the Agreement when it did not call the Petitioner for overtime service. The Petitioner does not dispute that the employee called, A. B. Colson, a guaranteed extra board clerical employee, had preferential rights over the Petitioner when overtime was required to fill a vacant position. Rather, the Petitioner contends that the position filled was one which Colson was not qualified to perform, and the Petitioner should have been called instead.

Before turning to a consideration of that issue, however, we must consider a procedural matter. Both the Petitioner and the Carrier contend that the other side violated the time limits of the Agreement. Rule 37 of the Agreement, in pertinent part, provides:

> "All claims . . . must be presented in writing . . . to the officer authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim . . . is based."

The initial claim is dated May 11, 2009. On July 27, 2009, the Petitioner wrote to the Carrier advising that he had not received a response to the claim and the Carrier had violated the 60-day time limit set forth in Rule 37.

On August 6, 2009, the Carrier responded to the Petitioner. The Carrier wrote:

> "I have reviewed the mailing address you have utilized for the transmittal of your claims and for forwarding the requested information and noticed that you have used an incomplete mailing addresses as it does not contain the speed code (J-646). This departmental specific code was devised by our mail room several years ago to ensure the proper delivery of claims, grievances, and correspondence to the responsible department for handling. The creation of this departmental specific code was necessary to prevent situations as these from occurring. Without the inclusion of this specific routing code as part of the address, the delivery of the item simply cannot be guaranteed, even though the mail room may have received the envelope. The inclusion of the speed code is just as essential a part of our address as the street address and you will notice its inclusion on our letterhead. I do not know who advised you of our mailing address, but I can advise that your representative labor organization was

notified of our proper mailing address on July 31, 2008 as well as July 2, 2009, and should have provided that information to you for handling your claims at this level.

SCL Rule No. 37(a) requires that all claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Carrier authorized to receive same within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Inasmuch as you did not properly address your claims, they were not received in this office. Consequently, you have failed to present your claims in a timely manner and your claims are respectfully denied in their entirety."

The on-property handling of this dispute contains a letter dated July 31, 2008 addressed to the Organization representing the Petitioner. The letter contained a "listing of officers who are designated as the first level for claims and grievances." The listing includes the addresses of each of the designated recipients. One of the items shown as part of each of the addresses was a speed code. It is noteworthy that in the Petitioner's letter dated August 12, 2009, the Petitioner continued to press his time limit contention, but this time he included the speed code as part of the address.

It is well settled that the burden of proof to show receipt of a claim in a timely manner is upon the party sending it. The Carrier contends that it did not receive the claim within 60 days of the claim date. There is no probative evidence submitted by the Petitioner that shows to the contrary. Accordingly, the Board finds that the claim must be dismissed as untimely.

The Board further finds that, even if the claim had been timely filed, it would be dismissed on the merits. The evidence offered by the Petitioner allegedly showing that Colson was not qualified was that he, and another guaranteed extra board Clerk, had been forced to work on the position in question without undergoing necessary training. The particular training mentioned is Oracle, which the Petitioner, as well as another employee who had held the position, had taken. The problem with such evidence, however, is that the Petitioner does not explain how such failure to have been trained in Oracle led to the conclusion that Colson was not able to perform the functions of the position. Indeed, the statement of Colson recites only that he had not been trained. There is no statement that he was unable to perform all the duties required of the position because of a lack of training, or for any other reason for that matter.

As noted by the Board in Third Division Award 35991:

> "It is well settled that the Carrier has the right to make determinations about employee qualifications, and the Board will not disturb those determinations without evidence that they were made arbitrarily or erroneously. Mere disagreement with the Carrier's determinations or assertions of impropriety without proof are not sufficient to warrant intervention by the Board."

The Board's language in Award 35991 is directly applicable in this case. There is not a shred of evidence that Colson was not qualified to carry out the duties of the position or that prior training was required by Agreement or job description.

For all the reasons set forth above, the claim must be 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 18th day of October 2011.