

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41469
Docket No. MS-41806
12-3-NRAB-00003-120068

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

PARTIES TO DISPUTE: (Catherine H. Lukensmeyer
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

- “1. Was the Carrier’s response to the grievance filed by the Claimant timely? If not, what is the appropriate remedy?
2. Does the NRAB have jurisdiction over the Claimant’s dispute over the Carrier’s Debit Policy?
3. If so, was the Carrier’s Debit Policy applied to the Claimant in a just and equitable manner?”

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 underlying facts giving rise to this matter are not in dispute.

Petitioner Catherine Lukensmeyer worked for the Carrier as a Lead Service Attendant. At all times relevant in this matter, the Petitioner was governed by a

Collective Bargaining Agreement (CBA) between Amtrak and the Amtrak Service Workers Council (TWU-HERE-TCU or "Organization").

On October 5, 2010, the Petitioner submitted a claim to the Crew Base Manager pursuant to Rule 18(a) of the CBA in which she alleged as follows:

"In accordance with Rule 18 of the Collective Bargaining Agreement (CBA) between the National Railroad Passenger Corporation (AMTRAK) and its Employees represented by the AMTRAK Service Workers Council (TWU-HERE-TCU) I hereby grieve the unjust and inequitable actions and policies of AMTRAK in the issuance and collection of Debits (specifically Shortage #0297740 prepared and dated Sept. 23, 2010).

This action is unjust and inequitable because

- There is no system of Chain of Custody in place at Amtrak.
- There is inadequate, and sometimes nonexistent, secure storage provided by Amtrak.
- As an LSA I am being financially harmed by the current inventory system at Amtrak and held accountable for product distribution beyond my control. Specifically, Service Attendants (SAs) can provide overly-generous pours of wine from "fifth" bottles, possibly to their own benefit.
- SAs are: '[r]esponsible for accurately filling out the meal checks' (Amtrak Service Standard's Manual No. 5.1; Chap. 8, Sec. 2 c) yet are not held accountable if the checks are not. Those errors result in loss of inventory and thus a Debit to me (LSA).
- Amtrak pays wholesale for product yet debits the LSA the full retail menu-listed amount, thus profiting on unsold product at my expense, the LSA.
- Amtrak's Transfer Out Form (896) is printed on a 'dot matrix type' machine on which the numbers are difficult to read.

- Amtrak's On-Board Service Working Schedules do not provide for adequate time to complete the paperwork required by policy (abstracting and 896) thus resulting in acute sleep deprivation which in turn results in accounting errors on the 896.

Relief Sought: Cease and Desist. Acknowledgment by Management of an unfair impropriety of holding me personally and financially accountable for product/inventory control and Amtrak to provide Bonding for claimant. Make claimant whole with the restoration of monies lost and collected through the Debit System (\$92.45). Removal of all Shortage Notice #0297740 records from employee personnel file.”

The Crew Base Manager replied on December 5, 2010 denying the claim. In this regard, the Crew Base Manager noted, in relevant part:

“All debits and overages are issued on an individual basis. The remedy for the settling of all debits also is on an individual basis. The process for addressing debits is explained in the Amtrak Service Standard's Manual No. 5, Chapter 8: Accounting, pages 207 through 210, Debit Notice Procedures and Procedures for Protest.

You make mention that Service Attendant errors result in debits. As the Lead or Employee in Charge it is the individual LSA's responsibility to monitor and address the performance of the Service Attendants under their supervision.

In addition, your grievance makes reference to no system of Chain of Custody and non-existent secure storage. All LSA "896" paperwork is sent to the processing center in EL Paso, TX., and scanned into a permanent record in the V – Trak programming system. If there was any possibility that some documents were not scanned or missing the individual Lead Service Attendants' own personal records and paperwork (which are required to be kept according to Chapter 8 policy) could be used as verification. In your grievance you failed to show that your own records would have shown the debit collection was incorrect.

Based on the above established process, this claim is denied in its entirety.”

In her reply to the Crew Base Manager, the Petitioner maintained as follows:

“In Accordance with Rule 18 Sec. (b) of the Agreement between the National Railroad Passenger Corporation (AMTRAK) and its Employees Represented By (sic) the AMTRAK Service Workers Council (TWU-HERE-TCD), I find your disallowance of my grievance noted above to be unacceptable and hereby appeal it. Your response is unacceptable because:

1. It is outside of the time limits established, both by witnesses and positive proof; contrary to your false claim of receipt by your office on October 8, 2010.
2. It is non-responsive to a number of the citations in the grievance.

Mr. McNutt, twice I have requested to meet with you so that we could have substantive talks to work collaboratively to seek [a] solution to what is clearly a problem at AMTRAK. You expressed to me that you had no interest in that. For that, I am truly sorry.

On another note, rather than ignore subsequent Debits or Overages during this protracted process, I am filing an Affirmative Defense for each.”

On February 10, 2011, upon advice of the Crew Base Manager, the Petitioner submitted her appeal to the Director of Labor Relations, as well as the Chief Labor Relations Officer and Assistant Vice President of Labor Relations. Hearing no response from the Carrier, on March 18, 2011, the Petitioner filed a Notice of Intent with the Board.¹

¹ On March 7, 2011, the Petitioner submitted her resignation, noting that her last date of employment would be March 18, 2011. The Petitioner resigned on March 18 as noted.

DISCUSSION & FINDINGS

A. The Claimant's Issue on Timeliness Under Rule 18 of the CBA

Rule 18(a) provides:

“(a) All claims or grievances other than those involving discipline must be presented in writing by or on behalf of the employees involved to the highest officer of the crew base at which the employee is assigned within 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 officer shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented.”

The record shows that on October 5, 2010, the Petitioner sent her claim to the Crew Base Manager by certified mail, return receipt requested. The record further shows that the Petitioner's claim was delivered and signed for by the Carrier on October 6, 2010. The Carrier responded by letter dated December 5, 2010, and faxed its response to the Organization's office that same date. However, it is clear that the Carrier did not advise the Petitioner of its response until December 6, 2010.

By letter dated December 14, 2010, the Petitioner advised the Carrier, in relevant part, that its December 6, 2010 response “[i]s outside of the time limits established both by witnesses and positive proof, contrary to your false claim of receipt by your office on October 8, 2010.”

As noted above, Rule 18(a) requires a response to the claim to “whoever filed the claim or grievance.” Based on the foregoing correspondence and delivery dates, it is clear that the Carrier notified the Petitioner of its decision to deny her claim on the 62nd day following the date upon which the Petitioner filed her claim, clearly in violation of Rule 18(a). Given this conclusion, the remedy is clear – Rule 18(a) requires that when the Carrier's response is not within the mandated time frame, “[t]he claim or grievance shall be allowed as presented.” Accordingly, the instant claim, to the extent it seeks remuneration of \$92.45, is sustained. In addition, any

records that exist in the Petitioner's personnel file regarding this shortage notice shall be removed.

With respect to the Petitioner's request for a "cease and desist" order, it is well established that such an order is outside the scope of the Board's jurisdiction, particularly where, as here, the Petitioner seeks such a remedy as applied to policies and procedures that are within the Carrier's right to create. There is nothing within the terms of the CBA that prohibits this right as applied to the duties and responsibilities of a LSA. Accordingly, the Petitioner's request for a cease and desist order, as well as the remaining portions of the Petitioner's requested remedy not specifically addressed above are denied.

AWARD

Claim sustained in accordance with the Findings.

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 13th day of December 2012.