Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41470
Docket No. MS-41807
12-3-NRAB-00003-120069

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:

"Is Amtrak's Scheduling Practice of beginning a Lead Service Attendant's (LSA) rest break based on the arrival time of the train a just past practice?

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 September 2, 2010, the Petitioner submitted a claim to the Crew Base Manger 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 misapplication of Rule 11, Section I (g) by Amtrak CMC Manager Joseph Carroll on August 15, 2010 and August 29, 2010."

Relief Sought: Cease and Desist.

On December 14, 2010, the Petitioner sent another letter to the Crew Base Manager (Certified Mail, Return Receipt Requested, and Hand Delivered) in which she stated:

> "On September 2, 2010 I filed a grievance concerning the misapplication of Rule 11, Section I (g) by CMC Manager Joseph Carroll whereby his practice is that an LSA's rest (time off) started at the time the train 'hit the bumper.' The morning of October 14, 2010 I received a call at home from Mr. Gary Kennedy of CMC concerning this grievance. We had substantive discussion whereby, and I do not want to speak for him but, we basically agreed that an LSA is still working, and their rest period does not begin, until released from the Run thru Office, Remit Office or Commissary.
>
> That discussion was over 60 days ago. Throughout all of this I have received no response whatsoever from you. According to the Agreement between The National Railroad Passenger Corporation (AMTRAK) and its Employees Represented by the AMTRAK Service Workers Council (TWU-HERE-TCU) Rule 18 Sec. (a), I prevail on the issue. If that is not your understanding, please notify me in writing so that an appeal may be filed in a timely manner."

On February 10, 2011, 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. In relevant part, the Petitioner noted:

> "On another note, there is an additional grievance attached (B) which I filed on September 2, 2010 concerning the start time of the legal rest period for an LSA following their required duties at the conclusion of a trip. I have had substantive discussion with Amtrak representatives.

However, as recently as my trip last month, I am still asked by CMC what time the train arrived at the station. According to the contract, I have prevailed and this practice should have been corrected and ceased."

Hearing no response from the Carrier, on November 9, 2011, the Petitioner filed a Notice of Intent with the NRAB.[1] The Petitioner stated her claim as follows:

"This is my Submission for Case No. NRAB-00003-120069 for an unadjusted dispute between myself, Catherine H. Lukensmeyer and the National Railroad Passenger Corporation (AMTRAK), involving the following:

Is Amtrak's Scheduling Practice of beginning a Lead Service Attendant's (LSA) rest period based on the arrival time of the train a just practice?

First and foremost it is my position that they are out of time limits. I prevail since, although there were substantive discussions (Exhibit CL3 (p1) and Exhibit CL8 (p3 & 4), no one from Amtrak (Exhibit CL3 (p1) and Exhibit CL4 (p1 & 2) ever responded to my claim (Exhibit CL2) in writing as required by Rule 18 (a) (Exhibit CL5) 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).

Barring that, the facts are that policy from Amtrak's Service Standard's Manual (Exhibit CL 7 (p1-3)) mandates that, following arrival at the station, the LSA.

- Off-Load stock from the train
- Accompany the stock from train side to the catering facility
- Observe and monitor the return to inventory process
- Complete the 896 Transfer Out Form
- Count and turn in money (company funds) to the Remit Office
- Have management sign off on paperwork.

[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.

In dispute of these facts is Rule 11(g) (Exhibit CL6 (p2)) of the CBA since I contend that I am still on 'assignment' based on the fact that we are still 'on the clock' since Amtrak keeps the LSA on paid status until management has signed off on paperwork. Thus, one is still working and rest would not begin until one is 'off the clock' and payroll.

Remedy Sought is a Cease and Desist of this practice and LSA's rest time starting when LSA is released from work by Amtrak on their OBS Time Authorization Sheet."

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 September 2, 2010, the Petitioner filed her claim with the Crew Base Manager. The record further shows that while the Petitioner had substantive discussions with the CMC Manager, the Carrier failed to respond, in writing, to her claim. As a result, by letter dated December 14, 2010, sent certified mail, return receipt requested, as well as hand delivered, the Petitioner advised the Carrier that given its lack of a response, she should prevail on her claim pursuant to Rule 18(a). The Petitioner's February 10, 2011 appeal to the Director of Labor Relations and its Assistant Vice President, Labor Relations followed.

As noted above, Rule 18(a) requires a written response to the claim to "whoever filed the claim or grievance." Based on the foregoing correspondence and delivery dates noted above, it is clear that the Carrier failed to notify the Petitioner, in writing, of its position regarding her claim, clearly a violation of Rule 18(a). Given this

conclusion, the remedy is clear – Rule 18(a) requires that where the Carrier's response is not within the mandated time frame, "[t]he claim or grievance shall be allowed as presented." However, the Petitioner seeks, as a remedy, a "cease and desist" order, an action outside the scope of the Board's jurisdiction. Accordingly, the Petitioner's request for a cease and desist order must be dismissed.

Notwithstanding our determination regarding the Petitioner's requested remedy, noted above, given the fact that the Petitioner's employment with the Carrier ended as a result of her voluntary resignation effective March 18, 2011, the instant claim, filed on her own behalf, is moot in any event.

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 13th day of December 2012.