

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CASE NO. 34

AWARD NO. 34

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation (Amtrak, hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"(a) Claim made by J.F.T. Sickelstiel III, for payment at the overtime rate for all over time paid Junior Employee, Wayne Church on the Speno Ballast Cleaner, on the following dates:

7-29-79	-	12½ hours overtime
7-30-79	-	18 hours overtime
7-31-79	-	12 hours overtime
8-01-79	-	8 hours overtime
8-02-79	-	8 hours overtime
8-03-79	-	9 hours overtime
8-05-79	-	9 hours overtime
8-14-79	-	2 hours overtime
8-15-79	-	12 hours overtime
8-16-79	-	14 hours overtime
8-17-79	-	8 hours overtime
8-18-79	-	3 hours overtime
8-23-79	-	8 hours overtime

Totaling One Hundred and Twenty-Three and one-half (123½) hours."

Claimant Joseph F. T. Sickelstiel III was employed as a Foreman, Track Inspection Gang A-162, headquartered at Bowie, Maryland, during the period covered by this claim. It is the position of the Claimant that he, rather than Mr. Wayne Church, should have been assigned to work the Speno Ballast Cleaner, for the reasons that Claimant is qualified to do the work and has done so many times before, and he is senior to Mr. Church.

The case before this Board is a confusing one. Because of that, and because both the Carrier and the Organization failed to fully present their arguments and documentation on the property, this Board will review all the documentation and arguments presented to us, without precedent for future cases.

The first issue which this Board must address is procedural, that is, the matter of time limits. The claim sent to the Carrier's Division Engineer was dated August 27, 1979. The Division Engineer's reply denying the claim was dated October 22, 1979. The latter was sent by certified mail and was returned to the Carrier by the U.S. Postal Service marked "not deliverable as addressed - unable to forward."

The Organization has urged this Board to grant the claim based on the provisions of Rule 64 of the current Agreement. The pertinent provisions of Rule 64 are:

- "(b) All claims or grievances must be presented in writing by or on behalf of the employee involved...

Should any such claim or grievance be disallowed, AMTRAK shall, within sixty (60) days from the date same is filed, notify whoever filed the claim

or grievance...in writing, of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented... (Emphasis added.)

- (c) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of disallowance... Failing to comply with the provision, the matter shall be considered closed... (Emphasis added.)

The Division Engineer's letter dated October 22, 1979, was sent to 8235 Karmer Court, Glen Burnie, Maryland. The Organization points to Carrier Form NRPC 310/75, which shows a new address for Claimant of 406 Holly Road, Glen Burnie, Maryland, effective September 12, 1977. The Organization argues that because Claimant's new address was on record with the Carrier, sending the denial of the claim to an old address at which delivery could not be made constituted a failure to reply within the sixty (60) day period required by Rule 64(b).

This Board cannot agree. The Carrier did not fail to reply within the required time period; instead its reply was incorrectly addressed. In the absence of any showing that this was done in bad faith, this Board does not view the erroneous use of an outdated address, in the circumstances of this case, as an effective failure to abide by Rule 64(b). Those circumstances include the facts that first, it was the responsibility of Claimant to notify the Division Engineer of his new address, and second, that there is some question whether the Holly Road address was Claimant's address at the time of the denial letter.

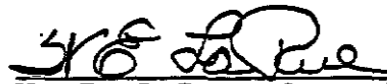
It is the Carrier's contention that should the Board decide that Rule 64(b) does not require granting the claim, the Board need not go further and consider the merits of the claim. As with the Organization's procedural claims, this Board does not agree. Given our decision that Rule 64(b) is not fatal to the Carrier's case, so we find that in the particular circumstances of this case Rule 64(c) does not bar the claim pressed by the Organization. Also, we do not agree with the Carrier's contention that the Organization's entire case is predicated on Rule 64(b). The Organization's letter to the Carrier's Director-Labor Relations, dated March 28, 1980, specifically alleged Rules 1 and 4 of the current Agreement, in addition to Rule 64.

Turning then, to the merits of the claim, this Board finds the following based on the credible evidence in the record. Employees subject to the scope of the Organization's effective Agreement with the Carrier may properly be assigned to the Speno Ballast Cleaner. But so too, may other employees covered by other labor agreements. This Board finds that such was the situation during the period covered by the claim, and for that reason, the action of the Carrier in assigning the work to Mr. Church rather than Claimant, was not violative of Rules 1 and 4. Accordingly, this claim must be denied.

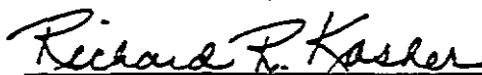
AWARD: Claim denied.



L. C. Hriczak, Carrier Member



W. E. LaRue, Organization Member



R. R. Kasher, Chairman and
Neutral Member

June 4, 1982
Philadelphia, PA