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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36845
Docket No. CL-37462
04-3-02-3-523

The Third Division consisted of the regular members and in addition Referee M. David Vaughn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12916) that:

1. The Carrier, violated the TCU/NRPC Agreement at 30th Street Station, Philadelphia, Pennsylvania, when it changed the duties of the Ticket Office Extra Board job description, effective January 01, 2001 (see Attachment 1).
2. The Carrier shall now remove the additional duties from the revised job description, and return same to its original agreed upon wording. Carrier shall also pay any claim arising from this breach of agreement until claim is resolved.
3. Carrier also violated the time limit provisions of Rule 7-B-1(a) when it failed to respond to the claim and give its reason for disallowance within sixty (60) days from the date was filed.
4. As a result of the time limit violation Carrier shall now allow the claim as presented as mandated by Rule 7-B-1(a).”

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 claim does not name any individual Claimant, however, it is acknowledged that the Street Station, Philadelphia, Pennsylvania, and employees on the Clerk's Extra Board at that location, are covered under the provisions of the parties' Northeast Corridor Clerical Agreement.

By Memorandum dated December 27, 2000, the Carrier informed "Ticket Clerks, Extra Board Employees" employed at the 30th Street Station, Philadelphia, Pennsylvania, that, effective January 1, 2001, the job description for their positions would be changed to require them to cover vacancies occurring in the Metropolitan Lounge at that location. Effective January 1, 2001, the Carrier began requiring Ticket Clerks and Guaranteed Extra Board Clerks assigned to positions in its 30th Street Station to cover such vacancies. The Metropolitan Lounge is located directly above the ticket office at the 30th Street Station.

The Organization alleged, in the handling of the claim, that the Carrier violated the Agreement, particularly Rules 4-C-1 (Absorbing Overtime) 5-C-1 (Extra Boards) and Appendix E, Extra Board Agreement, when it changed the job description. The Carrier contended in response, that it had not violated the Agreement, that it had not added any additional duties to the job description and that Appendix E gives it the right to determine the location and positions assigned to the Extra Board list. In addition, it contended that the claim is procedurally defective because it did not name any Claimant, did not specify any damages and did not identify any claim dates when the Rules cited were allegedly violated. The Organization contended that the Carrier violated the time limit provisions contained in Rule 7-B-1(a) when it failed to respond to the claim and give its reasons for disallowance within 60 days of the date the claim was initially filed.

The claim was denied by the Carrier. By letter dated September 14, 2001, the General Chairman progressed the dispute to the Director, Labor Relations. The appeal was denied by the Carrier on November 13, 2001.

The Organization argues that the provisions of Rule 7-B-1(a) of the governing Agreement require that the Board sustain the claim without reaching the merits. It contends that the claim was hand-delivered to the Carrier on February 23, 2001, and that the Carrier did not respond, by denying the claim, until April 25, 2001, some 61 days after it was filed. It argues that numerous Awards support its position that the claim must be "allowed as presented," i.e., sustained.

With regard to the merits, the Organization argues that Appendix E, Article 1, requires that the Carrier only use Extra Board employees on the territory and in the departments agreed to by the parties. It contends that the Ticket Clerk extra list only protects extra assignments and vacancies that occur in the 30th Street Station Ticket Office and that positions in the Metropolitan Lounge do not fall within the territory of the 30th Street Station Ticket Office Extra Board. It contends that the Carrier is not permitted to unilaterally change and expand the agreed on territory and department of the Ticket Clerk extra list employees by changing the job description of extra list employees.

Finally, the Organization argues that, where particular conditions are established as requisites for the Carrier action or inaction (See Third Division Award 22416), the Carrier must prove when the Organization challenges its actions that such conditions were satisfied. It contends that Appendix E, Article 1(B) and Rule 5-C-1 obligate the Carrier to negotiate with the Organization and reach an agreement to permit Ticket Clerk Extra Board employees to protect vacancies in the Metropolitan Lounge. It argues that the Carrier failed to meet its burden to prove that all conditions of both provisions were complied with.

The Carrier argues that the claim is procedurally defective because it does not name a Claimant, any claim dates and/or compensation claimed for the alleged violations. In addition, it contends that the claim was filed under Rule 7-B-1, which has not been applicable to claims in the Northeast Corridor since June 1998. It cites authority that failure to identify a Claimant or claim date indicates a failure to meet

its burden of proof. The Carrier urges that the claim be dismissed for those reasons.

With regard to the merits the Carrier argues that this dispute is virtually identical to one recently addressed in Third Division Award 36196, where the Carrier's use of Guaranteed Extra Board Clerks in Penn Station, New York, to work in the Metropolitan Lounge without a new agreement was permitted. It notes that the dispute was triggered by a memo virtually identical in all circumstances, except for date and place, to the one at issue in the instant case.

The Carrier further argues that decisions regarding the assignment of work, blanking of positions and scheduling of overtime are Management prerogatives and that there is no rule in the Agreement that prohibits it from assigning a guaranteed and qualified Extra Board Clerk to protect PE Lounge Attendant vacancies. It argues that past practice has been that employees assigned to the respective Guaranteed Extra Boards will protect all vacancies within their territory. It asserts that the Metropolitan Lounge is in the territory of the Ticket Office at 30th Street Station, Philadelphia, Pennsylvania.

The Carrier further argues that no Rule has been cited or facts developed proving that its actions violated the Agreement. It contends that the Organization failed to meet its burden of proof in establishing a violation, and that "mere assertions" are not proof. Citing authority, the Carrier contends that, because the Organization has not submitted any proof that a violation occurred with respect to the claim, it must be denied.

Finally, the Carrier argues that no Claimant would be entitled to any compensatory relief, in any event, because no showing of any monetary loss to any employee has been made. It contends that any potential Claimants were regularly assigned to a guaranteed Extra Board position and did not lose any compensation.

Both parties raise procedural issues. If the Organization's challenge to the timeliness of the Carrier's response was found to be valid, then its claim might be sustained. If the Carrier's position that the claim is procedurally defective was to be upheld, then the claim must be dismissed. The Board finds that the claim is, in fact, procedurally defective and must be dismissed.

The claim as filed was procedurally defective, i.e., void ab initio, because it did not indicate on whose behalf the Organization was filing the claim. While precedent Awards indicate that it is not necessary to specifically name an employee, an employee or employees must be sufficiently described to be readily identifiable by the Carrier without further evidence or ascertainable without undue difficulty. (See Third Division Award 20054.) It is not the Carrier's, or indeed the Board's responsibility to determine or assume whom the Organization intended as the beneficiaries of the claim. The record lacks any proof of harm to any employee. In addition, despite its failure to identify any specific Claimant, the Organization sought payment – for whom is not exactly clear – for “any claim arising from this breach of agreement.” The need to identify a Claimant is not just for the sake of convenience; it is to enable the Carrier to defend its actions by providing appropriate evidence. (See Third Division Award 20166.)

Inasmuch as the claim is disposed of on procedural grounds, the Board does not rule on other matters raised by the parties. However, the Board notes that, on the merits, it has decided a number of cases in the past on the identical issue of whether Extra Board employees in a Ticket Office are authorized to cover vacancies in a lounge or partially exempt positions. In each case, the Board concluded that the Carrier had not violated the Agreement by covering such vacancies. (See Third Division Award 36196.)

As for the Organization's claim that the Carrier failed to meet its burden, the Board distinguishes its Award 22416, cited by the Organization, from the instant case. In the former case, the Carrier had a contractual obligation that could not be demonstrated by the Organization: to show that an “effort” was made to observe the principle of seniority. In the instant case, the ability to show that the required conditions of the Agreement were met was within the control and ability of the Organization. Thus, the burden of proving its case did not shift to the Carrier, but remained with the Organization.

AWARD

Claim denied.

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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 28th day of January 2004.