

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25032
Docket No. 44591
99-1-97-1-S-6730

The First Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

"Formal request for relocation benefits in behalf of J. P. Hoey."

FINDINGS:

The First 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.

On or about January 22, 1992 the Carrier instituted Interdivisional Service between Portage, Wisconsin and Bensenville, Illinois. On October 18, 1994 Claimant submitted to the Carrier a claim form for relocation benefits citing the establishment of the 1992 Interdivisional Service as the event giving rise to the claim and stating that he was affected on January 22, 1992. The form also stated that Claimant's relocation request had been denied and that, subsequently, on April 1, 1992, three junior employees had been relocated to Portage for which they were paid relocation benefits pursuant to an arbitration award. The claim requested the same benefits for Claimant.

By letter of March 7, 1995 the Organization notified the Carrier that it had not responded to the claim within the applicable time limits and that such failure should render the merits of the claim a moot issue. By letter of March 24, 1995 to the Carrier the Organization maintained that the Carrier had failed to comply with the time limits of Article 35, Section (c) of the applicable schedule agreement and requested payment of the claim as further provided therein.

By letter of June 6, 1995 the Carrier denied the claim on the merits without reference to the time limit issue raised by the Organization in its March correspondence.

The Organization appealed the Carrier's denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

The Organization bases the claim in this case upon Article 35 (Time Limit on Claims), Section (c) which provides in pertinent part that "[C]laims presented in the manner outlined in Section (b) hereof must be allowed or declined by the Superintendent within ninety (90) days from the date of presentation." Section (b) provides in pertinent part:

All claims (except claims for lost earnings in connection with discipline cases . . .) must be presented in writing by or on behalf of the employee involved to the Superintendent within ninety (90) days from the date of the occurrence on which the claim is based; otherwise the claim will be barred.

...

The Carrier argues that inasmuch as the claim was not filed timely it is barred which renders the Carrier's untimely denial inconsequential.

We believe the Carrier has the stronger position on this issue.

The Interdivisional Service which Claimant listed as the basis for the claim was established on or about January 22, 1992. Moreover, Claimant stated on his claim form that he had been affected on or about that date. Additionally, the arbitration award relied upon by the Organization which found that employees junior to Claimant who were required to protect their assignments out of Portage, Wisconsin were entitled to relocation benefits, and which may have alerted Claimant as to his possible entitlement

to the same benefits, issued on May 5, 1994. Whether the event upon which the claim in this case is based was the January 22, 1992 institution of Interdivisional Service or the May 5, 1994 arbitration award, the claim in this case was filed well beyond ninety days from either as provided in Article 35, Section (b). We believe the Carrier makes a persuasive argument that if the Organization is going to invoke the time limits of Rule 35, Section (c) it necessarily must acknowledge the applicability of Section (b). In any event we find that the time limits of Section (b) govern.

Inasmuch as the claim in this case was not filed timely in accordance with Article 35, Section (b), by the clear terms of Section (c) the Carrier was not obligated to respond to it. Moreover, as held in Third Division Award 26549, "[N]umerous awards have held that where, as here, no valid Claim existed ab initio, the Board may not consider Carrier's later procedural error or the merits of the Claim. See Third Division Awards 9684, 10532 and 16164. . . ." We see no reason why this Division should apply a different rule.

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 First Division

Dated at Chicago, Illinois, this 21st day of June 1999.