

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33403
Docket No. CL-34185
99-3-97-3-672

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11850) that:

(a) The Carrier violated the Clerks’ Rules Agreement effective July 21, 1972, as revised, particularly Rules 6, 14, and other rules when on August 30, 1995, (effective August 31, 1995) they force assigned Claimant Wilsey to Material Control Clerk position, tour of duty various, location Material Control - Turbo Facility, Rennsellaer, NY, instead of force assigning the senior qualified unassigned employee, Norman L. Jette to the position.

(b) The Carrier improperly considered Claimant Wilsey as the senior unassigned employee, when in fact Clerk Jette was the senior unassigned employee, as he did not own a regular assignment on the closing date of the initial advertisement of Material Control Clerk, (BR95-013), August 22, 1995.

(c) Claimant Wilsey should now be allowed eight (8) hours punitive pay based on the hourly rate of \$15.46, commencing August 31, 1995, or the first day she covered the involved assignment, and continuing for each and every day thereafter, until this claim is resolved, on account of this violation.

(d) Claimant Wilsey should also be allowed the difference in earnings that senior unassigned Clerk earned as the most senior unassigned employee, which Claimant Wilsey would have otherwise earned, had the Carrier not made the improper assignment.

- (e) Senior Clerk Jette should be considered the most senior unassigned employee and should be assigned to the involved position.
- (f) This claim has been presented in accordance with Rule 25 and should be allowed.
- (g) Claim is further made that the provisions of Rule 25 were violated when no denial was timely issued, thus the claim is payable as presented."

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.

On August 30, 1995, effective August 31, 1995, Carrier forced assigned Claimant to position of Material Control Clerk. Claim was filed by the Vice General Chairman with the Commissary Supervisor on October 12, 1995. After 60 days had passed with no response from Carrier, the Vice General Chairman listed claims in a letter sent to the Division Manager Labor Relations on December 18, 1995. The instant claim was listed in that letter. Carrier responded to the Organization on December 28, 1995, and a conference was scheduled for January 10, 1996. That conference was postponed and was ultimately held on February 14, 1996.

On January 23, 1996, the Manager of Terminal Services responded to the initial (October 12, 1995) claim. In that letter he stated in pertinent part:

"Ellen Rosenberg from Labor Relations has called seeking paperwork on this claim as she has received your appeal on its denial. I cannot locate the

paperwork related to this claim in looking through Mr. Connors' office. Therefore I have reconstructed the answer and am sending it to you with a copy to Ms. Rosenberg. If you have your copy of the denial, please advise Ms. Rosenberg. If you do not, please accept this reconstruction due to the extenuating circumstances involved here."

The "extenuating circumstances" to which this letter refers is the fact that Carrier's Officer, Mr. Connors, to whom the initial claim had been made, had shortly thereafter become seriously ill and, subsequently, passed away.

The Organization has stated that it is not presenting the merits of this claim before the Board. Therefore will make no comment on that subject. Rather, the Organization claims that the Carrier violated the Agreement when it failed to respond to the original claim within the time limits provided by Rule 25 of the Agreement. That Rule provides in pertinent part:

"(a) . . . Should any such claim or grievance be disallowed, the supervisor shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee(s) or the representative) in writing of the reasons for such allowance. If not so notified, the claim or grievance shall be allowed as presented."

In the peculiar facts of this case, it is understandable that Carrier's response to the Organization's claim might have been delayed. However, the delay in this case was lengthy, in part as a result of Carrier's difficulty with succession planning and record keeping. Accordingly, the Board finds that Carrier has a limited liability for the claim as presented; to wit, from the date of the incident (August 31, 1995) until it finally responded to the claim on January 23, 1996.

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 July 1999.