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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36551
Docket No. SG-36047
03-3-00-3-179

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore and
(Ohio Chicago Terminal Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company B&O:

Claim on behalf of all signal employees on the B&OCT for payment of additional time on a prorated basis equal to the man hours of work performed by Camco Construction employees, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed employees not covered by the Agreement to perform signal work, pushing pipe, at numerous job sites and deprived the Claimants of the opportunity to perform this work. Carrier also violated Article V of the Agreement when it failed to respond to the initial claim in a timely fashion. Carrier File No. 15(99-75). General Chairman's File No. CT-10-98-1. BRS File Case No. 11336-B&OCT.”

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.

By letter dated October 13, 1998, sent by Certified U.S. Mail to the proper Carrier officer, the Organization presented the claim as summarized and identified in the STATEMENT OF CLAIM supra. There is no evidence in the case record to indicate that this initial claim was ever responded to by the Carrier.

Subsequently, by letter dated April 16, 1999, sent by Certified U.S. Mail to the Carrier's Director Employee Relations, the Organization repeated in detail the claim as previously outlined in the October 13, 1998 letter and alleged that the Carrier was now in violation of the provisions of Article V (Time Limits) of the negotiated Agreement.

Article V as referenced herein reads in pertinent part as follows:

"Article V - August 21, 1954 Agreement
Article V - Carriers' Proposal No. 7

Establish a rule or amend existing rules as to provide time limits for presenting and progressing claims or grievances.

This proposal is disposed of by adoption of the following:

The following rule shall become effective January 1, 1955:

1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:
 - (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, 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 carrier 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, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Later by letter dated June 9, 1999, the Carrier replied to the Organization's April 16, 1999 letter. Because of the serious nature of this case, the entire text of the Carrier's June 9, 1999 letter is quoted herein.

"Mr. Chuck Cleghorn, General Chairman
Brotherhood of Railroad Signalmen
499 Bradford Place
Bolingbrook, IL 60490-3194

Dear Mr. Cleghorn:

This refers to your letter of April 16, 1999, your file CT-10-98-1, received in this office on April 27, 1999, appealing claim in behalf of unnamed Claimants for an equal proportionate share of the total manhours allegedly expended by Camco Construction employees performing pipe pushing work at various crossings on the B&OCT during some unknown period of time.

Initially, the claim is declined as vague and indefinite. In a monetary claim it is incumbent upon you as the Petitioner to name the Claimants. In this case you do not identify who the Claimants are. Your reference to all signal employees on the BOCT is inappropriate, inasmuch as all employees on the BOCT are not entitled to remedy sought, even if a violation did occur which in this case it did not.

Furthermore, the work made subject of your claim is not pipe pushing in a sense, but rather it involves directional boring which requires equipment and skills BOCT employees do not have. This method is required due to the obstruction caused by buried sewer, water and utility lines. Conventional boring simply could not be performed at these locations.

Based on the foregoing, the claim is declined in its entirety.

Yours truly,

J. H. Wilson
Director Employee Relations"

It is obvious from the text of this letter that the Carrier, for reasons which are not apparent, totally ignored the time limits issue raised by the Organization.

The parties conferenced the case on July 30, 1999. The Organization confirmed this fact by its letter to the Carrier dated March 2, 2000.

These four pieces of correspondence constitute the sum total of the on-property handling of this dispute.

In its Submission to the Board, the Carrier, for the very first time, advanced arguments and contentions relative to the alleged time limits violation. There is not one scintilla of evidence or opinion presented by the Carrier to attempt to justify its failure to address the time limits issue during the on-property handling of the dispute. The arguments advanced in its Submission might well have buttressed its position relative to the time limits issue if they had been made part of the record during the on-property handling of the claim. Unfortunately for the Carrier they were not. They cannot be considered now.

The language of Article V is clear and unambiguous. It places responsibilities on both parties to the Agreement that must be accepted by them. It outlines in clear, concise language the penalty that applies for non-compliance with the Agreement language. When a claim is not disallowed within the prescribed time, the Agreement says "... the claim or grievance shall be allowed as presented"

Therefore, without considering the merits of this claim in any way, the Board concludes that the procedural violation by the Carrier requires that this claim must be sustained.

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AWARD

Claim sustained.

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 8th day of May 2003.
