

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26329
Docket Number CL-24967

George V. Boyle, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: ((Northeast Illinois Regional Commuter Railroad
(**Corporation**)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9753) that:

1. Carrier violated the Agreement Rules, particularly Rule 63, when it assigned a **5:30** A.M. starting time to the Ticket Agent's position at **Joliet**, Illinois, and

2. Carrier shall now be required to compensate Claimants **Zivic** and **Hartsook** under Rule **52(b)**, three (**3**) hours at the pro rata rate in addition to their eight (**8**) hours' compensation for each working day retroactive sixty (60) days from June **10**, 1981, and continuing until such time as this claim is resolved and the violation ceases."

OPINION OF BOARD: On June 10, 1981, the Organization filed a Claim on behalf of the two Claimants alleging violation of Rule 63 which states:

"Rule 63. Starting Time

(a) . . .

(b) At locations where only one position is assigned to work during the twenty-four hour period, the starting time of such position shall be at or between 6:00 A.M. and **8:30** A.M. or at or between 6:00 P.M. and **8:30** P.M."

They state that at the **Joliet**, Illinois location there is only one position filled and that a starting time of **5:30** A.M. was initiated by the Carrier in violation of the Rule.

It is their contention also that the Claimants rightfully deserve to be compensated under Rule **52** for 3 hours pay for each occasion they have worked at the **5:30** A.M. starting time retroactively sixty (60) days from the June 10 date, and until such time as the violation is stopped.

Rule 52 states:

"a) **Employees** notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one half will be allowed on the minute basis.

b) An employee notified or called to perform work in advance of and continuous with the regular work period shall be paid three (3) hours at the straight time rate for two (2) hours work or less, and at the overtime rate thereafter on the minute basis, for the time required to work in advance of the regular starting time."

Further the Organization points out that the Carrier failed to respond in a timely manner to their Claim which was filed under Rule 51:

"a) All claims or grievances must be presented in writing by or on behalf of the employees 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. . . ."

The Carrier's response should have been made within 60 days of the filing of the claim, **i.e.** by August 10, 1981. The Carrier did not respond in writing until September 14, 1981, and thus the Claim should "be allowed as presented" since Rule 51 provides that . . .

. . . 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."

It is also the Organization's contention that this violation is of a continuing nature and therefore payment should be retroactive for 60 days from the date the Claim was filed and payment **also** should extend until the violation ceases. They cite Section 2 of Rule 51 which states:

". 5 . A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claims shall be allowed retroactively for more than 60 days prior to the filing thereof."

The Carrier contends that the 5:30 starting time was initiated over two (2) years before the Claim was initiated and exhibited a number of copies of this bulletined position dating back to June 1979, which indicated a 5:30 A.M. starting time. They averred that since the Organization was aware of this and never challenged this action it had been accepted as proper.

It was its position that the Claim not being properly filed under the time limit Rules was invalid from the beginning and it is of no consequence that the Director of Suburban Operations may not have responded to the Local Chairman's letter of June 10, 1981.

Finally, the Carrier held that this was not a continuing Claim and that, **arguendo**, if Rule 63 were violated the Claim was time barred because it was not filed within 60 days of the date the starting time changes was initiated.

With this latter point the Board must agree. There are numerous Awards upholding the distinction between a continuing and non-continuing violation which need not be repeated here. Suffice it to say, that the claimed violation is a single occurrence with a definite date and not a repeated action whereby retroactively and continued violation is warranted.

However, the Carrier's failure to respond in a timely manner to the Organization's written claim cannot be excused by the Carrier's contention that the claim was invalid and therefore no response was required. Rule 51 is explicit and controlling. Thus the claim must be allowed to the extent of a payment of 3 hours to each of the claimants at the appropriate rate for each date worked from the date of the claimed violation, June 10, 1981, until the date of the Carrier's written response, September 14, 1981.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

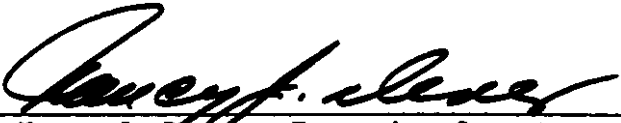
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois this 8th day of June 1987.