

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29496
Docket No. CL-30092
93-3-91-3-614

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

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Houston Belt & Terminal
(Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10632) that:

(1) The Houston Belt & Terminal Railway Company violated the Agreement effective April 15, 1972, as amended when it failed to bulletin and award a new position in the Freight Agency, Demurrage Area, effective August 27, 1990.

(2) The Houston Belt & Terminal Railway Company shall be required to compensate clerical employe K. A. Larson 107.21 per day on a continuous basis commencing August 27, 1990, and continuing until such time as claim is settled."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

This Claim alleges the Carrier violated the Agreement when it failed to bulletin a job of more than thirty days duration. Carrier is alleged to have assigned a junior employee to fill the job to the detriment of the more senior Claimant. The Claim demands payment of damages of \$107.21 per day for each day worked by the junior employee beginning August 27, 1990.

The on-property record developed by the parties shows that the junior employee last worked in the disputed job on November 4, 1990, when she was displaced by an employee with greater seniority than Claimant. The span of the Claim, therefore, is from August 27, 1990 through November 4, 1990.

The Carrier has made several assertions in its defense regarding the merits of the Claim. The Organization, however, contends that the Claim must be allowed as presented because the Carrier failed to make a timely disallowance of the Claim.

Rule 28 of the Agreement reads, in pertinent part, as follows:

"1. All claims or grievances must be presented in writing by or on behalf of the employe 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 employe 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."

According to the on-property record, the Claim was dated and placed in the Carrier mail on September 12, 1990. Carrier's officer acknowledges receipt on September 14, 1990. Carrier's denial is dated November 14, 1990.

The Organization asserts that the Claim was not denied until 63 days after filing. The Carrier, contending that the time limits run from the day of receipt, does not dispute that its denial was dated 61 days after filing.

It is not necessary for this Board to interpret the Agreement and construe when the Claim was filed. Even under the construction most favorable to the Carrier, its denial was untimely by at least one day. And while this is a small amount of time, the requirements of Rule 28 of the Agreement are clear and unambiguous. Since the Carrier's denial was untimely, the Claim must be allowed.

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Because of our decision in this matter, it is not necessary to reach the merits of the Claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, on this 21st day of January 1993.