

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the current agreement when on December 12, 1967 and June 3, 1970 it failed to notify or call Carman Helper S. M. Haney for service in accordance with his seniority.
2. That the Carrier violated the procedural provisions of Rule 23 (a) of the controlling agreement dated August 1, 1969 when it failed to give written decision on claim filed in behalf of Carman Helper S. M. Haney by General Chairman A. D. Hickman in his letter of February 24, 1975.
3. That accordingly, the Carrier be ordered to compensate Carman Helper S. M. Haney, sixty (60) eight hour days at the Carmen's rate of pay beginning September 12, 1974 through November 10, 1974.
4. That accordingly, the Carrier be ordered to place Carman Helper S. M. Haney name on the Big Spring, Texas seniority roster ahead of Carman C. I. Wright, Jr. and G. A. Hernandez, after completion of 1,040 days served as upgraded Carman Helper.

Findings:

The Second 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 employe 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.

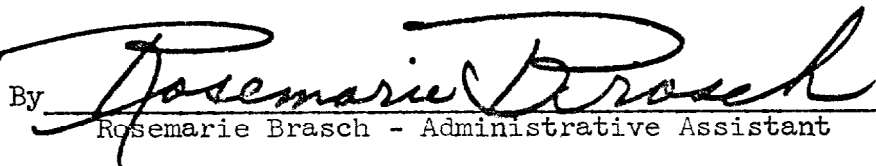
The threshold issue in this case involves the procedural question of whether the Carrier properly failed to answer the claim submitted on February 24, 1975. Rule 23 (a) of the Agreement provides that the Carrier must answer a claim within sixty (60) days or the claim shall be allowed as presented. In this case the claim was filed on February 24, 1975 and was not denied until May 20, 1975, which was beyond the sixty (60) day time limit rule. The Carrier contended in its answer that the claim previously was barred by the thirty (30) day time limit for protesting seniority lists under Rule 21(c) and therefore required no answer. The language in Rule 23(a) is clear and unambiguous. It is mandatory language. The Carrier cannot prejudge a claim as frivolous and use that position as a basis for ignoring the sixty (60) day time limit in Rule 23(a). See Second Division Awards 3637, 4594, and 6370. This Board is required to sustain this claim without considering its merits.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1978.