

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Boston and Maine Corporation

STATEMENT OF CLAIM:

1(a). That the Boston and Maine Corporation violated the controlling Agreement, specifically Rule 29 captioned "Grievances" when the Carrier did not respond to the Organization's certified letters dated February 9, 1987 and April 13, 1988 and refused to pay the Claimants listed below for its violations of the time limit provisions of Rule 29, and

(b). That the Boston and Maine Corporation also violated the controlling Agreement, specifically Rule 3 captioned "Holiday" and Article IV-Holidays of the Mediation agreement, Case A-10798 dated December 11, 1981, when the Carrier refused to compensate the Claimants listed below holiday pay for New Year's Eve, December 31, 1986.

2. That accordingly, the Boston and Maine Corporation be ordered to compensate the following Carmen and Coach Cleaners eight (8) hours each at the pro rata rate for the New Year's Eve holiday, December 31, 1986:

Carmen R. Rousseau; J. Begin; A. Hardy; R. Forrest; P. Clark; D. Labollita; D. Patch; D. Richards; G. Melanson; S. Pavelka; G. Langathianos; F. Howes; J. Cardarella; J. Brown; C. George; R. Garabedian; D. Goyette; W. Perry; W. Crosby; T. Kosmeh; H. Wilson; H. Liddy; P. Macomber; H. Cullen; T. Hardy; J. Cucinotti; R. Coady; T. Keegan; A. Landry; R. Simard; W. Patenaude; R. Good; R. Hall; M. Lennon; D. Hardy; G. Hardy; F. Hardy; A. Ordway; C. Ballas; R. Lowe; R. Getty; F. Sullivan; T. Murray; H. Brenna; K. Cronin; T. Hill; L. Comeau; R. Campbell; S. Medveski; K. Cronan; C. Taft; L. Cavalieri, H. Quebec; F. Russo; Coach Cleaners G. Rondau; J. Lacerda; A. Acquiaviva; P. Keaveny; M. David; R. Larson; G. Murphy; D. Gaudette; P. Lacarbonara; H. Rafferty; D. Swallow; P. Barnes; D. Fauvel, R. Mazzochia; J. Letourneau; J. Deniso; W. Higdon; J. Pagliccia; W. Furey; E. Wallace; R. Ring; C. Hilton; M. Destasio; J. Trowbridge; E. McEvoy; P. Tsoukalas; T. Bessette; J. Smith; W. Kelley; J. McClure; D. Nickerson; M. Leone, S. Dunbar; R. McNemar; J. Connors; J. Murphy, Jr.; R. Thistle; M. Nowe; W. Asher and R. McLaughlin.

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 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.

The Organization brings this Claim before this Board on both procedural and substantive grounds. It contends that Claimants were entitled to Holiday pay for the New Years Eve Holiday, December 31, 1986. It also contends that Carrier did not timely respond to the Claim filed in this matter. Carrier's sole defense before this Board is that the Claim was denied by it on March 23, 1989 and was not appealed to the Board until January 11, 1990, which is beyond the nine month time limit for such appeals provided in the Agreement.

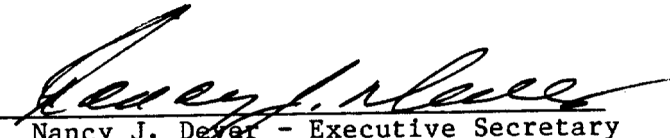
Notwithstanding the fact that Carrier's response to the initial Claim may have been argued to be untimely, the Claim was in fact denied by Carrier on March 23, 1989. This denial triggered the clock for appeal off the property. The Organization had nine months from that date, by the explicit language of Rule 29, to institute proceedings before this Board. Proceedings were not commenced until January 11, 1990, which date is beyond nine months from the date of denial. Accordingly, the appeal to this Board is procedurally defective. This defect precludes the Board from any consideration of either the merits of the Claim or the Organization's contentions on an earlier time limit default on the part of the Carrier.

The Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.