

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13352
Docket No. 13196
99-2-96-2-101**

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Meridian & Bigbee Railroad Company**

STATEMENT OF CLAIM:

- “1. That the Meridian & Bigbee Railroad Company improperly subcontracted Carmen work to GE RailCar in violation of the October 5, 1993 Agreement, as amended and in particular Appendixes 1 and 8, but not limited thereto.**
- 2. That accordingly, the Meridian & Bigbee Railroad Company be ordered to pay Carmen G. Frazier and M. Hinson eight (8) hours each at the straight time rate for a total of sixteen hours at the straight time rate.”**

FINDINGS:

The Second 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.

This claim raises both an issue of the timeliness of Carrier's response to the Organization's appeal, and the applicability of Appendix No. 8 Exceptions to the particular repairs in issue.

With respect to the issue of timeliness, the record reveals that the original claim was filed on October 5, 1995, protesting Carrier's sending M&B Railcar 4132 to GE Railcar Shop on October 4, 1995 for minor door and door hardware repairs. In Carrier's November 9, 1995 denial, it asserts that said railcar was returned to GE Railcar at their request for upgrading and repainting.

The Organization appealed this denial by letter dated November 16, 1995. The next correspondence in the Organization's file is a letter dated March 15, 1996 requesting that the claim be paid based upon Carrier's failure to answer its appeal within the requisite 60 day time limit.

Carrier's March 20, 1996 response indicates that it did timely respond to the Organization's November 16 letters, and attaches a copy of a letter dated December 1, 1995, which states, in relevant part:

"This acknowledges receipt of your letter dated November 16, in which you appealed the decision of A. W. Creel concerning various time claims filed on behalf of Carmen G. Frazier, E. Blanks, W. Brown and M. Hinson regarding work on MB 4000 Series boxcars."

By letter dated March 22, 1996, the Organization pointed out to Carrier that it had appealed another time claim on November 16, 1995 on behalf of the four named Claimants for work subcontracted on several M&B Series 4000 boxcars, and that the December 1, 1995 response referenced by Carrier related to that claim, not the instant one. It noted that the instant claim was appealed on behalf of Frazier and Hinson for subcontracting on M&B 4132 along with a claim appealed on behalf of Blanks and Brown for subcontracting work on M&B 5139.

In its response of March 29, 1996, Carrier states:

"This refers to your March 22nd letter with specific notation that claims on MB 5139 and MB 4132 were not answered by me.

The intent of my December 1, 1995 letter was to serve as a reply to all of your November 16 letters. The first sentence should have read ‘your letters dated November 16.’ As a matter of fact, the 2nd paragraph refers to CLAIMS. . . .”

Based upon a careful review of the record, the Board concludes that it need not reach the merits of this claim, since the Organization has met its burden of proving that Carrier failed to respond within the 60 day time limit to the instant claim. There is no doubt that the Organization appealed a number of different claims on November 16, 1995. However, there has been no showing by Carrier that it either had a practice of issuing one denial letter for more than one claim filed on the same date, or that it was acceptable procedure to do so. In fact, it appears that Carrier routinely responded separately to each claim filed by the Organization, referencing the Claimants named, appeal date and substance of the claim, even if the reasons for denial were the same as other claims.

Since there is no dispute that another claim was appealed on November 16, 1995 that directly corresponds to the December 1, 1995 denial letter which Carrier asserts covered the instant claim, the Board cannot say that the Organization should have reasonably known that the December 1, 1995 denial letter was intended to respond to this claim. Further, the wording of that denial letter references only one appeal letter of November 16, 1995. Carrier’s contention on March 29, 1996 - after the Organization requested payment due to the lack of timely response - that it intended the December 1, 1995 denial letter to reply to more than one claim and that it should have read “letters” in the plural rather than singular, cannot be said to timely cure the defect in its response or put the Organization on notice of its intention within the contractual 60 day time limit.

Accordingly, the claim is sustained on the basis that Carrier failed to timely respond to the Organization’s appeal as required by the Agreement, and the Board need not reach the merits of the subcontracting issue in this case.

AWARD

Claim sustained.

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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 Second Division**

Dated at Chicago, Illinois, this 20th day of January 1999.