

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13531

Docket No. 13431

00-2-99-2-26

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

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (UPFE)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. Company violated Rule 35 of the agreement when they waited ninety-five (95) days to notify the Claimant or his representative in writing, that they were disallowing the claim or grievance.**
- 2. Carrier shall compensate Mr. Trent Whitmer the Claimant from September 10, 1995 to present for eight (8) hour at the current rate of pay for every day Carrier did not pay Claimant full rate of pay for CMR (Carman Mechanical Refrigeration).”**

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.

Form 1

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As is evident by the Statement of Claim, the Organization alleges the Carrier violated the Time Limit on Claims Rule, and is asking this Board to resolve this claim on that issue.

The on-property handling is as follows. In a letter dated August 11, 1997, the Organization presented a claim on the Claimant's behalf seeking full Carmen's rate retroactive to September 10, 1995, as the Carrier hired another employee and started him on the full Carmen's rate. The Organization contends that the Carrier did not timely respond to its August 11, 1995, letter. The Carrier, on July 10, 1998, furnished a copy of the denial of the claim first presented, but then stated:

"... Moreover, the 'occurrence' referenced dates back to the time period of July-September, 1995 and the claim was not filed August 11, 1997 well outside of the sixty (60) day time period for the filing of claims and grievances as set forth in Rule 35 (l)."

Rule 35 a(1) reads as follows:

"All claims or grievances must be presented in writing by or on behalf of the employee involved . . . within sixty (60) days from the date of occurrence on which the claim . . . is based. . . ."

This claim was not filed within 60 days of the date of occurrence upon which it is based. It is, therefore, outside the parameters of Rule 35, and accordingly, whether the Carrier did or did not respond, the claim is void ab initio.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 27th day of July, 2000.