

**Award No. 19076**  
**Docket No. MW-19365**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Robert M. O'Brien, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**THE AKRON, CANTON & YOUNGSTOWN**  
**RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to reimburse the claimants (identified below) for meal expenses incurred during the periods set forth below:

T. R. Pierce .....July 20 through October 20, 1969  
D. Hyden .....September 20 through October 20, 1969  
S. Shephard .....September 22 through October 20, 1969  
J. Smith .....September 20 through October 20, 1969  
L. A. Smith .....September 20 through October 20, 1969  
John Hale (Hill) ...September 20 through October 20, 1969  
T. S. Meadows.....September 22 through October 17, 1969  
(System File E-24)

(2) The claims\* as presented by Vice Chairman Mulford in letters dated November 12, 1969 to Engineer Maintenance of Way B. H. Lester should be allowed as presented because said claims were not disallowed by Assistant to General Manager H. L. Bullock in accordance with the procedural requirements of Rule 20.

(3) Each of the claimants named in Part (1) hereof be allowed the amount of expenses claimed for the specified periods.

\*Letters of claim presentation will be quoted within our Statement of Facts.

**EMPLOYEES' STATEMENT OF FACTS:** The claimants are members of an extra gang who are engaged in the type of service that requires that they live away from home during their work week. They are headquartered in a "Trailer Camp Outfit" wherein only lodging is provided. Employees in this type of service are entitled to a daily meal allowance or actual necessary expenses, as the case may be, in accordance with the provisions of Rule 48(a) which reads:

with the Carrier. As stated previously, prior to this time \$3.50 was allowed and accepted.

(Exhibits not reproduced.)

**OPINION OF BOARD:** *Organization raises procedural question that claims, as presented, should be allowed because Assistant to General Manager H. L. Bullock did not disallow said claims on appeal as provided in Rule 20. Carrier contends that: The time limitation for denial of the claim was waived because of letter from Assistant to General Manager to General Chairman dated March 12, 1970 in which Assistant to General Manager stated: "Please be advised that I would like to defer a decision until further facts can be determined in this case. Therefore, I ask that we be prepared to discuss same in conference to be held April 1, 2 or 3, as mentioned in my previous letters of this date." Conference was held April 2, 1970 and claims were disallowed by Assistant to General Manager in letter dated July 1, 1970.*

The only way the time limitations set forth in Rule 20 can be waived is by agreement of the parties as provided in Rule 20(b). When Carrier proffers an affirmative defense that such an agreement was entered into, it has the burden of proof. (Awards 11496 — 14758.) The only evidence tendered by the Carrier, in this case, attempting to establish a waiver of the sixty (60) day time limit, is the letter dated March 12, 1970 wherein Assistant to General Manager advised the General Chairman that he would like to defer a decision and suggested conference dates. In order to establish an agreement to waive or extend the time limitations in this instance, it would be necessary to show that General Chairman had granted the request to waive or extend the time limitation. Such evidence of agreement is lacking in this instance.

Therefore, we will sustain the claim, as presented, for dates set forth in Part (1) of the claim.

**FINDINGS:** The Third Division of the adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated Rule 20.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.

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