

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21787
Docket Number MW-21828

John P. Mead, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Louisville & Nashville Railroad Company

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

(1) The **claim*** as presented by the General Chairman on March 19, 1975 to Division Engineer T. R. **Rosamond** shall be allowed as presented because said claim was not disallowed by Division Engineer T. R. **Rosamond** in accordance with Rule 26(a) /System File 1-12(118)/ E-365-121.

(*) The letter of claim will be reproduced within our initial submission.

OPINION OF BOARD: The original claim, presented to the Carrier on March 19, 1975, included request that: "...**Gary** L. Meadows be paid at the Burro Crane operator's rate of pay 60 days retroactive from the date of this letter, 8 **hours** each day, except January 9, 27, 28, 29, 30, 31, February 20 and 28, 1975....."

Carrier's letter denying the claim was postmarked May 19, 1975, beyond the 60 day limit specified in Rule 26(a), although the letter was dated May 16, the 58th day. Upon appeal, carrier's Assistant Vice President-Engineering decided: "We will pay this claim as presented. That is, the difference between what Mr. Meadows earned during this period and the Burro Crane operator's rate." Subsequently, claimant was paid \$25.20 representing such difference, but Organization representative continued to claim the entire amount of the higher rate for the days in question, without offset of pay received at the lower rate for those days. In support of this position, claimant cites the portion of Rule 26(a) reading: "...If not so notified, the claim or grievance shall be allowed as presented, . . ."

Prior cases establish that Carrier's original denial was unquestionably late, as the date it is received by the Organization is controlling. (Award Nos. 15443 and 18004).

Petitioner's contention that no offset is permitted under Rule 26(a) is supported by prior awards cited to this Board. "As presented" has been interpreted strictly in similar cases, denying offset where the **employee** was unavailable for work during the time in question (NDC decision 16; Interpretation No. 1 to Award No. 18004), and denying deduction for amounts

earned in another position (Interpretation Nos. 1 and 2 to Award No. 11798). This Board believes that the application of Rule 26(a) urged by claimant should be followed in this case.

The \$25.20 paid to claimant in August 1975 should be considered as partial payment, credited against the Carrier's liability under the ensuing award.

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 failed to comply with Rule 26(a).

A W A R D

Claim sustained in accordance with foregoing Opinion and Findings.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 18th day of **November** 1977.

