

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21899
Docket Number MW-21641

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when it deducted one day's pay from the first half of November 1974 pay of Welder A. T. Budzeak (System File T-D-105C/MW-40(b) 2/14/75).

(2) The claim* presented by Vice General Chairman S. R. Walster on December 16, 1974 to Superintendent P. B. Rasmussen shall be allowed as presented because said claim was not disallowed by Superintendent P. B. Rasmussen in accordance with Rule 42.

(*) The claim as presented reads:

'This claim is for eight (8) hours' pay at straight time rate of five dollars and fifty-four cents (\$5.54) for a total claimed of forty-four dollars and thirty-two cents (\$44.32).'

OPINION OF BOARD: On December 16, 1974, the Vice General Chairman submitted a claim to Superintendent Rasmussen concerning holiday pay allegedly due Claimant.

Assistant Superintendent Jacobson, declined the claim on December 30, 1974.

When the matter was appealed to the Labor Relations Vice President on February 14, 1975, in addition to the merits of the claim, the General Chairman contended that the claim was payable by default because the Superintendent "...failed to decline the claim."

The Vice President's April 1, 1975 declination made no mention of the "default" argument, nor did his August 8, 1975 letter regarding the claim - even though that contention was raised again in July 10, 1975 correspondence.

Rule 42 A states:

"A. All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances."

The Organization asserts (and Carrier does not deny) that under the cited rule, the Carrier can - and does - designate the officer to receive claims, and the order of appeals. Thus, Claimant asserts that because the claim was not disallowed by the official to whom it was presented, it must be "...allowed as presented."

In its Submission to this Board, Carrier minimizes the "default" argument - asserting that Rule 42 A requires that the "Company" notify of a declination of the claim - which, it contends, was done here.

We have considered the conflicting authority submitted by the Parties, and we have noted the Carrier's assertions that it is free to assign its employees and run its business in this regard without limitation by the Organization.

6963 ← We have noted, among other authority, Second Division Award 6983, concerning this Carrier and the Carmen - adopted in November of 1975 - which supports Carrier's position herein, as well as Third Division Award 20790 (July, 1975) involving a different Carrier. Among other of the Organization's citations, we have considered Award No. 14 of Public Law Board 1844 (August 18, 1977) which concluded that:

"...the great weight of authority on this subject is contra to Award 20790."

We are of the view that if Carrier desired to defend the concept that an original claim may be denied by someone other than the official to whom it is forwarded - it had a duty to raise that concept while the matter was under review on the property where, as here, the Organization put Carrier on notice of its contention in that regard on two occasions before the dispute was submitted to this Board.

It is unnecessary to consider the merits of the dispute.

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 the Agreement was violated.

A W A R D

Claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.