

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22601
Docket Number MW-22348

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(Chicago, Milwaukee, St. Paul & Pacific
(Railroad Company

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

(1) The Agreement was violated when assignments to the positions advertised in Bulletin No. 15, dated February 25, 1976, were not made within five (5) days from closure date.

(2) The claim in favor of Messrs. **Hinton**, Rice, Schmidt and **Tallent** as presented by Assistant General Chairman Jacobson in a **letter*** dated April 21, 1976 shall be allowed as presented because of Superintendent Jonason's failure to tender a decision in conformance with the requirements stipulated within Sections 1(a) and 1(c) of Agreement Rule 47.

(3) **As** a consequence of either or both (1) or (2) above Machine Operators **Hinton**, Rice, Schmidt and Tallent

'be paid the difference between what they earned between March 15, 1976 and April 6, 1976 and what they would have earned had they been assigned as machine operators.'

(System File **C#26/D-1953**)

*letter of claim presentation will be quoted within the **Employes'** Statement of Facts."

OPINION OF BOARD: **Prior** to April 6, 1976, the four Claimants **were** employed as track laborers. Under date of February 25, 1976, Carrier's Division Engineer issued Bulletin inviting bids up to and including March 9, 1976 for positions of four machine operators, Gang 1519, working on the Montana Division and stating that appointments would be made **within** five (5) days **from** the **date** the Bulletin closes (i.e., by March 14, 1976).

It is not disputed that Claimants bid for said openings. However, they **were** not appointed to them until by notice dated April 6, 1976, issued by Division Engineer.

Roadmaster A. E. Schmit received a letter from Assistant General Chairman P. H. Jacobson, dated April 21, 1976, presenting claim in behalf of the four subject Claimants for reimbursement of earnings they would have received had they been assigned as machine operators after five days of date of closure of Bulletin (i.e., for the days of March 15 through April 6, 1976), citing in support provisions of Rule 8(b) of working Agreement, Form 262.5.

Under date of June 22, 1976, Roadmaster Schmit wrote to Assistant General Chairman Jacobson that, pursuant to Rule 47, he was not the Carrier officer to whom this claim should have been presented. The letter further points out that on the date claimed, each of the Claimants were operating machines and, accordingly, these claims should have been submitted to the Division Engineer.

Under date of August 15, 1976, Assistant General Chairman Jacobson again presented these claims to Carrier's Superintendent Jonasson, quoting from Roadmaster Schmit's letter of June 22, 1976 and asserting that inasmuch as Carrier did not advise Organization "within the time limits prescribed in Rule 47" as to the allowance or disallowance of the claim, Carrier was "in default" and claim must accordingly be paid as presented.

In addition, General Chairman R. W. Mobry wrote to V. W. Merritt, Assistant Vice Resident, Labor Relations, under date of December 7, 1976, taking the position that Roadmaster Schmit had declined the claim after the 60-day period of time specified by Rule 47 of the schedule rules and, also, that Superintendent Jonasson had failed to respond to the August 15, 1976 letter of claim to him.

By letter dated January 4, 1977, Assistant Vice President, Labor Relations wrote to General Chairman Mobry that Carrier regarded claim barred and invalid, inasmuch as it had not been timely presented to the Carrier office authorized to receive such claim. In addition, Mr. Merritt states that, without prejudice to his procedural position although there may have been a delay in assigning Claimants to these positions, it was beyond control of Carrier, inasmuch as weather conditions prevented the machines from being operated at the time.

Carrier's position in respect to presentation of the subject claim to the improper Carrier office is substantiated in the record, particularly by Carrier's letter of January 17, 1968 which explicitly identifies respective Carrier officers with whom named classes of employees should properly initiate processing of their claims.

For Division Track Forces, embracing the category of instant Claimants, the Carrier officer authorized to receive claims in the first instance from Machine Operators is identified as Division Engineer. Carrier points out also that in previous instances, Chairman Mobry has himself taken the position that the Roadmaster was not the proper officer to receive claims for this type of **employee**.

Accordingly, we conclude that the claims herein were not timely submitted to "the officer of the Carrier authorized to receive same" as mandated by Sections (a) and (c) of Rule 47 and they must therefore be denied on those grounds.

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 **not** violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.