

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22822  
Docket Number CL-22824

**Martin F. Scheinman**, Referee

**PARTIES TO DISPUTE:** (  
(Brotherhood of Railway, Airline and  
( **Steamship Clerks**, Freight **Handlers**,  
( Express and Station **Employees**  
(Southern Pacific Transportation Company  
( **Texas and** Louisiana Lines

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the Brotherhood (**GL-8734**)  
that:

(1) **Carrier** violated the current Agreement **between** the parties including but not limited to Article VI, Section 2(b) of the TOPS Agreement (Addendum No. 1.) **and** Rule 1, Scope, when on February 13, March 5 and 28, April 2, 3, 4, and 9, 1977, when it allowed, permitted and/or required I.M.S. Manager, Paul **Hebert** and Assistant I.M.S. **Manager**, C. M. Dalton, who are excepted **from** all of the **Rules** of the **Clerks'** Agreement, to perform clerical and messenger duties **reserved** for **Employees** covered by the Clerks' Agreement.

(2) Carrier continues to violate these **same** rules by **allowing**, permitting and/or requiring Mr. **Hebert** and Mr. Dalton to continue performing those clerical duties on various subsequent dates.

(3) Carrier shall allow **the** first out extra board **employee and/or** the senior qualified regular **employee** with application on file to work positions in the I.M.S. Department at **Avondale**, Louisiana on **overtime basis**, eight (8) hours' pay at the time and one-half rate of \$53.0532 for each date **February 13, March 5 and 28, April 2, 3, 4 and 9, 1977**, and continuing on that **same basis** for each date thereafter **that** Carrier allows, requires and/or **permits** I.M.S. **Manager** Paul **Hebert** and Assistant I.M.S. **Manager** C. M. Dalton to perform clerical **and** messenger duties reserved for the Employee covered by the **BRAC** Agreement.

**OPINION OF BOARD:** The Organization **claims that** Carrier violated the Agreement between the parties when **it** allowed, permitted and/or required I.M.S. Manager Paul **Hebert** and **Assistant I.M.S. Manager** C. M. Dalton to **perform** clerical **and** messenger duties. The **Organization contends** that such duties are reserved to **employees covered** by the Agreement and that **Hebert** and Dalton are not covered therein. The Organization filed an initial claim **on** behalf of **certain** clerk positions **on** April 11, 1977. Terminal Superintendent **Conner** denied the **claim** by **letter**, dated **May 17, 1977**. Appeal was made to Superintendent **Winterrowd** on June **20, 1977**.

**Winterrowd** did not deny the claim until November 14, 1977. This was 147 days after the appeal was forwarded to him. Carrier argues that it had no obligation to **respond** to the **June** 20, 1977 appeal because the claim was deficient, e.g., no **employee** initiated the claim, no names were provided to correspond to the dates of the alleged violation, **and there** was a general lack of specificity. 2

**Rule 26 - Time Limits -** requires the **denial** of a claim be in writing within sixty (60) days from the date the claim was filed. This language is clear and unambiguous. Nothing presented to this Board excused 3 Carrier from its obligation to disallow the claim within sixty days. By failing to do so, any arguments Carrier wished to present to defeat the claim are untimely.

This Board has held **many** times that **time** requirements are mandatory **and that** failure to timely disallow a claim requires that "it be allowed as presented." See for example, Third Division Award No. 20520. As such, pursuant to **Rule 26**, we will pay the claim as presented up to November 14, 1977 - the date of the late denial. 4

In light of the foregoing, we are not reaching the **merits** of the 5 case.

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 sustained up to November 14, 1977. MAY 8 1980

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.