

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22874

Docket Number MS-22964

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (United Steelworkers of America, **AFL-CIO**
(The **Lake** Terminal Railroad Company

STATEMENT OF CLAIM: "This dispute involves the Carrier's failure to answer a time claim for Mr. **Diaz** dated June 21, 1978 within the **time** limits as per the current agreement."

OPINION OF BOARD: This case involves the alleged failure of carrier to answer on time a time claim submitted on behalf of Mr. **Diaz**, a former track laborer. Mr. **Diaz** was the claimant in Award 22837, wherein it was decided by this Board that carrier properly dismissed him **from** service on May 9, 1978, for failure to report to work at the conclusion of a leave of absence.

During the handling of the case in Award 22837 on the property, the organization alleged that it submitted a separate and distinct continuing time claim on behalf of claimant based on its contention that carrier had arbitrarily terminated the claimant. This time claim was submitted by the organization to establish for the record the date that claimant was able to report to work. He had been involved in an altercation on May 11, 1978, and was hospitalized and unable to work until June 14, 1978,

If **claimant's** case in Award 22837 had been upheld by this Board, the organization was aware that claimant would not have a legitimate claim for time lost between May 12, 1978, and June 14, 1978, because of his hospitalization and inability to work. It wanted to set the record straight on that point. The organization, therefore, advised carrier of its position in a letter dated June 21, 1978.

The original claim filed **by** the organization in **Award** 22837 requested pay for only one day, May 11, 1978. The organization is characterizing its letter of June 21, 1978 as a new claim and, as such, it argues that it should have been answered by carrier within 30 days, as is required under Rule 13 (a) of the controlling agreement. Carrier argues that it considered the organization's letter of June 21, 1978, as its response to carrier's denial of the claim for reinstatement of claimant. It also believed that the June 14 date specified in the letter **and** the statement concerning a continuing claim was only an amendment to the original **claim**. A response to the letter was not required by contract.

Subsequent to June 21, 1978, a representative of the organization telephoned a carrier representative and asked why a response to the June 21, 1978, claim had not been received by the organization. Carrier responded in a letter dated August 7, 1978, laying out its position in the matter and stating that **in** the event that the organization's June 21, 1978 letter was a new claim, this letter (dated August 7) was to be considered carrier's response and the June 21, 1978 claim was denied.

This claim was processed on the property through the steps of the grievance procedure and denied at each stage. It was then submitted to this Board for resolution. The issue to be decided here is a narrow one and deals only with whether the organization's letter of June 21, 1978, constituted the submission of a new claim and whether carrier was required to **respond** to it in accordance with **Rule** 13 (a) of the agreement.

At **the outset** of this opinion, the Board would like to state that if carrier would have responded to the organization's June 21, 1978 letter within 30 days, giving as its reason for denial the reason cited in its August 7 letter, this case would not have found its way to this Board. If it did come before this Board, the claim would have been denied with little discussion. Despite carrier's failure to respond to the June 21, 1978 letter within 30 days, this Board sees no basis on which to hold carrier responsible for any damages or to decide that the claim, as presented by the organization, can be sustained. Since this Board has denied the organization's claim in Award 22837 and upheld the dismissal of claimant in that case, **many** of the **arguments** presented by both parties in this case are moot. We have, however, considered each argument presented. This Board **must** conclude that carrier's failure to respond to the organization's June 21 letter should not result in any payment of lost wages to claimant.

The Board finds that the organization's June 21, 1978 letter cannot be construed as a new claim but rather it is an amendment of the claim filed on behalf of claimant in Award 22837. As an amendment to the original claim, it therefore becomes a moot issue as a result of **the Board's** denial award in that case. This Board, however, would like to comment on the point raised by the organization in this docket.

Sound labor relations and efficient handling of **employee** grievances requires that all claims, however unusual or frivolous they **may** seem to carriers' representatives, should be responded to in a timely manner. If carrier would have responded to the organization's June 21, 1978 letter rejecting it as a claim and this was done in a timely manner, this case may not have been pressed to the Board. Considerable time and money would have been saved by all concerned.

After extensive review and discussion of this docket, we shall dismiss 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 the Agreement was not-violated.

A W A R D

Claim dismissed.

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

ATTEST:

A.W. Paulos
Executive Secretary

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