

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 23072
Docket Number **MW-22506**

William M. **Edgett**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast Line Railroad Company

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

(1) The **claim*** as presented by the General Chairman on October 5, 1976 to Division Engineer S. T. Watson be allowed as presented because Division Engineer S. T. Watson failed to give **reasons**, in writing, for his disallowance of said claim **in** accordance with Rule 40 1(a) /System File C-4(31)-JWV/12-1(77-8) J2/.

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

OPINION OF BOARD: Carrier responded to this claim by stating:

"I have **made** a preliminary investigation of **this** matter and, based on information developed, I do not **find** that **the claim is** justified.

'The claim is respectfully declined."

After receiving Carrier's **response** the Organization progressed the **claim** solely on procedural grounds, asserting that Carrier's response did not **comply with the** requirement that it give a reason for denying the claim. That requirement is found in Rule 40, which reads:

"RULE 40
TIME LIMIT ON CLAIMS AND GRIEVANCES

Section 1

(a) All **claims** or grievances **must** be presented in writing by or on behalf of the employee involved, to the officer **of the** Carrier authorized to receive **same, within** 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 Carrier

"shall, within 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 Carrier as to other similar claim or grievances."

The Board has found a reference to the Rules to be a reason (Awards Nos. 21132, 20802). It has extended that requirement to find that a reference which implicitly referred to lack of rule support met the requirement of the rule (Awards Nos. **11208** and 11441). **It** has also accepted, as a reason, the fact that the denial was based on evaluation of the **evidence** contained in the transcript of an investigation (Award No. 14864). The **Board** has consistently recognized that a reason **must** be given in order to comply with the **Rule. The** inquiry by the Board focuses on whether the response **may** be **said** to contain a reason.

Where the response did not refer to the Rules and **simply** said that the claim **was** without merit, the Board has ruled that the Rule had not been complied with (Award No. 1.4259). **In a similar vein**, the Board did not find compliance with the rule where the response was "I have carefully reviewed the papers in this claim..." (Award No. 14426).

Did Carrier's response furnish a reason for its denial? Clearly it did not refer to the Rules or take the position that they had not been violated. It did not state that the facts could not support the claim. In fact, it qualified its review by stating that a "preliminary investigation" had been made. It went on to further qualify its factual review by stating that it was based on "information developed". Was the Organization to understand that further **information** might be desired, or that it **would** alter the decision? The answer given was that the claim was not "justified".

We have not been referred to a decision of the **Board** which has found that "justified" is a reason within the meaning of **that** word in Rule 40. While the Board has not required specificity, it has required what it has found to be a reason and has generally required **that** reason to be related to the facts or the rules. We are unable to go farther than the decided cases **and cannot** find that "justified" furnished a reason for the declination. Therefore the claim must be sustained.

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 Employee 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.

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

ATTEST: _____

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1980.