

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23118**  
Docket Number **H-22466**

William M. Edgett, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employee  
(The Denver and Rio **Grande** Western Railroad Company

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

(1) The **claim\* as** presented by the General **Chairman** on March 25, 1977 to Division Engineer **J. L. Ozment** shall be allowed as presented **because** said **claim was not disallowed** by Superintendent **J. A. Greener** in accordance with Rule 29(a) **/System File D-7-77/MW-17-77/**.

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

OPINION OF BOARD: This claim was filed after the time limits had run; however, Carrier answered the claim and did not raise the defense of lack of **timeliness**. The Board holds Carrier waived its right to **raise** that defense.

After the **initial** answer and appeal, Carrier then failed to **answer** the appeal within sixty (60) days. **As** provided by the rules, **Carrier's** failure to answer requires that **the** claim **must** be allowed **as** presented. Carrier **contests** that point by **asserting** that the claim was always bad, due to the untimely filing. Carrier's waiver of the **time** limits prevents it from relying on that defense.

Under NDC Decision 16 the liability resulting from Carrier's failure to deny the claim in a **timely manner runs** only to September 2, 1977, the date on which it answered.

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 in accordance with the Opinion.**

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

ATTEST:

*A. W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, **this 15th day of January 1981.**

