

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23205**
Docket Number **MW-23180**

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance** of Way **Employees**
{Chicago, Milwaukee, St. Paul **and** Pacific **Railroad** Company

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

(1) The **claim*** as presented by D. M. Gunther on September **18**, 1978 to Project **Manager R. J. Brueske** shall be allowed as presented **because** said claim was **not disallowed** by Project **Manager R. J. Brueske** in accordance with Rule 47(a) **/System File C#133/D-2252/**.

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

OPINION OF BOARD: Claimant D. M. Gunther is a roadway equipment operator who worked during June, July, **and** August 1978, in a capacity in which he was authorized, by agreement, to receive certain travel expenses. According to the record, claimant was paid for travel **time** and a meal and lodging allowance in accordance with Rule 26 of the agreement. It also appears from the record that **claimant** submitted a **normal** expense account and apparently included **certain** items that **Project Manager R. J. Brueske** thought were not reimbursable. Claimant and Brueske had a telephone **discussion** about the expense account items prior to September **13**, 1978.

On September **13**, 1978, Project **Manager Brueske**, by letter, **informed claimant** that he was returning his expense accounts for July and August and that he **had** already been paid expenses in accordance with Rule 26. If he would re-submit the August expenses, Brueske would forward it for payment.

On September 18, 1978, claimant **responded** to the **Brueske** letter. In his response, he **commented** that since he **and Brueske** had talked on the phone about his expenses, Brueske could have checked a few things **out** before he returned the accounts to claimant.

Claimant then went on to outline his job **situation** and discuss the **machines** he operated between June 5 and September **18**. Claimant ended the letter by stating that he intended to submit expenses for June when he got **them** figured out and that he hoped that the letter straightened things out and that there would be no more delay in his expense payment.

Nothing further transpired between the parties in this case until December 12, 1978, when General Chairman R. W. Mobry wrote V. W. Merritt, Carrier's Assistant Vice President for Labor Relations, indicating that Mr. Brueske had not responded within 60 days to claimant's September 18, 1978 claim. Merritt responded by letter on January 23 to Mobry, stating that Carrier considered claimant's original submission of his expewwe account as the initiation date of a claim under Rule 47(a) of the agreement. It also considered the Brueske letter of September 13, 1978, to be Carrier's rejection of that claim. Carrier argued in the Merritt letter that the Organization failed, in its appeal to Carrier's highest official, to cite what, if any, schedule rule was violated.

This case is before this Board solely on a time limit question under Rule 47(a) of the controlling agreement. Rule 47(a) states that all claims or grievances must be presented within 60 days of the date of the occurrence on which the claim or grievance is based. It also states that if a claim or grievance is to be disallowed, Carrier must do so within 60 days from the date that claim is filed. The issue in this case is when did claimant file his claim as contemplated under Rule 47 and when did Carrier respond?

After a thorough review of the record and of the previous awards cited by each side in support of its position, it is the opinion of this Board the claim must be sustained. This Board does not consider claimant's submission of his expense account as the filing of a claim, but as an action that regularly takes place in the normal course of business when an employe has reimbursement for travel expenses due him. Whether claimant made a mistake in his initial submission is immaterial. What is material, however, is that after Carrier returned claimant's expense account on September 13, 1978, indicating that he would not receive the amount requested, he wrote a letter explaining why he thought that he should be paid his expenses as submitted. It is the opinion of the Board that at this point a claim was filed.

Carrier had an obligation under Rule 47(a) to respond to claimant's September 18, 1978, letter and indicate why his claim was rejected. Carrier's letter of September 13, 1978, cannot be considered as having met this requirement, since the original submission requesting reimbursement was not a claim under the agreement. Carrier failed to respond to claimant's September 18, 1978, letter within the required 60 days. Article 47(a) states that in such a situation, the claim must be allowed as presented.

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 Employee 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. Paulson
Executive Secretary

Dated at Chicago, **Illinois**, this 16th day of **March 1981**.