

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23226

Docket Number CL-23054

George S. Roukis, Referee

PARTIES TO DISPUTE

{ Brotherhood of Railway, Airline and Steamship Clerks,  
{ Freight Handlers, Express and Station Employees  
{  
{ Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(CL-8833) that:

1. Carrier violated the agreement between the parties. Rule 38 in particular, when they failed to decline the claim of R. L. Pfeil, to exercise seniority under Rule 16 and for eight (8) hours pay for March 25, 1978 and every work day until the violation is discontinued, which was appealed to Superintendent J. P. Watters on July 25, 1978.

2. The claim shall now be allowed as presented.

OPINION OF BOARD: The pivotal question before this Board is whether Carrier failed to comply with Agreement Rule 38 - Time Limit On Claims when Superintendent J. P. Watters failed to deny the claim appealed to him on July 25, 1978. Carrier does not deny this omission, thus the procedural issue is properly joined.

In reviewing the Division's case law on this issue, we find two cases involving the same Organization and the same Carrier, that are judicially controlling. They are the National Disputes Committee's Decision No. 16 and Third Division Award 22829. In National Disputes Committee Decision No. 16, the Committee allowed the monetary portion of the claim because Carrier did not deny the claim within the sixty day period after it was filed and noted Carrier's acknowledgement of such failure. In the instant case, the claim was denied by the Vice-President of Administration on December 7, 1978, notwithstanding his notification on October 10, 1978 that Superintendent Watters failed to timely deny the claim that was appealed to him on July 25, 1978. It is a parallel situation. In Third Division Award 22829, we held in pertinent part that:

"Time limits are set for a purpose and it is the Board's obligation to carry out the parties purpose by respecting them. However, they must be given a reasonable application. They are not intended to provide a technical defense in those instances when no meritorious defense is available. Here there has been substantial compliance with the letter and spirit of the Rule. Carrier was placed on actual notice that Claimant was

"seeking a hearing under Rule 28 within the 60 days period provided by the Rule. It never answered Claimant's request."

This basic finding and the National Dispute Committee's Decision No. 16 are foursquare on point with the facts and circumstances herein. Superintendent Watters was obligated to deny the Claim, despite his assumption that it was invalid. We will sustain the claim only to the compensatory relief requested, but limit such payment to the period between March 25, 1978 through December 7, 1978, the day the Vice - President of Administration denied 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 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. Pauls  
Executive Secretary

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