

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23227
Docket Number CL-23057

George S. Roukls, 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-8835) that:

1. Carrier violated the Agreement between the parties, Rule 38 in particular, when they failed to decline the claim of C. J. Myers, J. A. Copeck, F. Kovacs, L. R. Copeck and E. Durnwald for January 25, 1978 and continuing until the violation is discontinued, appealed to Superintendent J. P. Watters on May 28, 1978.

2. These claims shall now be allowed as presented.

OPINION OF BOARD: In a companion case, Third Division Award Bo. 23226, Involving the same parties and the same issue, this Board concluded that Carrier violated Agreement Rule 38 when the Superintendent failed to timely deny the claim that was properly submitted to him. In the case before us Claimants filed a claim on March 24, 1978 for the difference in pay between their compensatory rates and the I.B.M. clerks in the yard office who were assigned the work of sending and receiving messages, previously performed by telegraph operators on telegraph machines at the MX office in Conneaut, Ohio. The Chief Dispatcher denied the claim on May 1, 1978 and it was appealed to the Superintendent on May 28, 1978. The latter official failed to deny the claim in timely fashion and an appeal for payment was made to the Vice-President of Administration on August 19, 1978. The Vice-President denied the claim on October 10, 1978 on the grounds that Claimants had not presented information to justify the merits and time limits violations.

In our review of this case, we concur with the Organization's position that the Superintendent failed to deny the claim in timely fashion. Similar to our holding in Award No. 23226 and the persuasive case law on time limit responses we find that Carrier violated Rule 38. It may well be that the claim is without merit and frivolous, but this does not excuse carrier from disregarding it. In Third Division Award 21900, we held in part that:

"But, we are inclined to determine that the Carrier can protect itself from such circumstances by the simple expedient of responding to the claim and setting forth its defenses therein. Were we to rule to the contrary, we would allow the Carrier to make the determination as to what is or is not a claim which is worthy of presentation here, and in essence, we would permit the Carrier to usurp the function of this Board."

This judicial assessment is apropos here. The Superintendent, despite his perceptions of the claim, should have timely responded to it when it was appealed to him on May 28, 1978. We will sustain the claim only to the compensatory relief requested, but limit such payment to the period between January 25, 1978 and October 10, 1978, the date the Vice-President of Administration responded to 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauler
Executive Secretary

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