

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23265
Docket Number MW-23394

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Lamoille Valley Railroad Company

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

(1) The Carrier violated the Agreement when it assigned work of the Maintenance of Way Department at Hardwick, West Danville, Morrisville, Greensboro Bend, Sheldon and East Fairfield, Vermont to outside forces January 2 through April 4, 1979.

(2) General Manager D. A. Snyder failed to disallow the claims (appealed to him in four letters - two dated May 10, 1979, one dated July 12, 1979 and one dated July 13, 1979) in writing as contractually stipulated within Agreement Rule 36-2(a).

(3) As a consequence of either or both (1) and/or (2) above, the claims* shall be allowed as presented.

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

OPINION OF BOARD: The Carrier contracted with an outside concern to rehabilitate certain of its tracks during the period January 2 through April 4, 1979. The Organization contends that such track maintenance work is encompassed within the scope of the agreement and that the work should have been performed by maintenance of way employees. By letters dated January 12, 1979, January 28, 1979, March 9, 1979 and May 7, 1979, the three claimants made claim for all time lost by them by virtue of the work having been performed by a separate contractor. The roadmaster, by letters dated March 12, March 22, June 19 and July 6, 1979, denied all the claims.

By two letters dated May 10 and one each dated July 12 and 13, 1979, the General Chairman appealed the four claims to the General Manager. The General Manager did not respond to the appeals made within the sixty days as set out in Rule 36, Section 2(a).

There are two issues before the Board. The first is the question of whether the work is within the scope of the agreement and the second is the effect of the failure of the General Manager to respond to the appeal within the sixty days provided for in Rule 36.

We will consider the latter first because if this is decided in favor of the claimants, then it will be unnecessary to address the first issue.

Sections 2(a) and (c) of Rule 36 provide as follows:

"2. All claims or grievances shall be handled as follows:

(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 claims or grievances.

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may be agreement in any particular case extend the 9 months' period herein referred to."

There is no disagreement that the General Manager did not respond to the appeals within the 60-day period.

In a letter dated February 4, 1980 addressed to the General Chairman by the General Manager, he stated "Rule 36 does not demand a written denial of an appeal to the highest officer of the company." Further in the Carrier's submission, it is stated that the General Manager does not understand Rule 36, 2(a) to require that the denial be in writing.

We have reviewed the Awards cited by the Organization and find they hold consistently that the procedural time limits must be adhered to.

In the Opinion of the Board, the language of Rule 36 does require that the appeal, as contemplated in Section 2(c), clearly is subject to the requirements in Section 2(a) that the matter be disposed of in writing within 60 days.

Carrier cites a conference held on July 30, 1979 during which the appeals were verbally declined. Carrier also cites a memorandum of October 22, 1979 confirming the denial. We find that neither of these items, a verbal decline nor a late written denial satisfy the specific requirements of the rule.

Because of the failure of the Carrier to respond in writing in a timely manner, we find it necessary to sustain the claim and do not address the merits of the case.

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;

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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 15th day of April 1981.