

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23511
Docket Number MW-23400

George S. Roukis, 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 Paul D. Faubion on January 16, 1979 to Assistant Division Manager V. J. Stoner shall be allowed as presented because Said claim was not disallowed by Assistant Division Manager V. L. Stoner in accordance with Rule 47(a) (System File C#10/B-25268).

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

OPINION OF BOARD: The pivotal question in this dispute is whether Claimant's letter of January 16, 1979 constituted a claim under Rule 47(a) of the controlling agreement. Claimant contends that it was a claim, since he was required to assume travel, lodging and extra expenses because of Carrier's failure to honor the April 4, 1977 protective agreement, while Carrier contends that it was not a claim since it was untimely filed, vague and unspecific and the extension of a grievance that had been resolved.

'The January 16, 1979 letter is referenced as follows:

"1/16/79

Mr. V. L. Stoner, Asst. Division Manager
1900 N. Central Ave.
Chicago, Il. 60639

Dear Mr. Stoner:

Because the Carrier has not honored the Polo-Culver Contract, regarding the employee moving expenses, I have had to assume payment of travel, lodging, and extra food expense over the past 7 months, while working at Excelsier Springs, 85 miles from my Chillicothe residence. During this time I have repeatedly written and phoned, asking that arrangements be made as covered by the Polo-Culver Agreement, for moving my residence to Excelsier Springs.

"I hope **you** will **agree** that this situation is unreasonable, end, I ask now to be reimbursed **for** these 7 months **away** from hcmte expenses, in the amount of **\$2,616.50**. An Itemized statement of these expenses **is** enclosed. **Further**, I ask that a definite **arrangement** regarding my future status be made immediately. I ask that either, (1) Arrangements be made for moving my residence to **Excelsier** Springs, or (2) **That** monthly reimbursement be made for these away from-home expenses.

Respectfully Yours,

/s/ Paul D. Faubion

copy to: R. W. Mobry, C.M.ST. P.P.
System Fed.
925 Upper Midwest Bldg.
Minneapolis, MN. 55401"

In our review of this case, we concur with **Claimant's position**. We have carefully considered **Carrier's averments** that the January 16, 1979 letter was not perceived **as** a claim since it was vague allaimprecise, but we find that the letter contained **sufficient specificity** to constitute a claim, **particularly**, the first sentence of paragraph two, which request&an **aggre-**gate dollar amount of relief. It was premised upon Carrier's alleged failure to comply with the 1977 Polo-Culver Protective **Agreement and** reflected a **dis-**tinct cause-effect relationship. Whether it was a meritorious or justifiable **claim** is not et issue here. Rule 47(a) which is applicable to this dispute **permits** en **employe** to **file** a claim with the **Carrier** officer, **authorized** to receive same, **within 60 days** of the occurrence on which the **claim** or **grievance** is **based**. It does not prescribe a claim format or **require** that certain information be provided as a **precondition** of validation. The aforementioned letter was not written in a generalized or conditioned Language, but written in **straight-**forward language which linked Carrier's failure to apply the April 4, 1977 Protec-
tive Agreement to **Claimant's** out of pocket expenses. Moreover, when the history of his request for protective status is studiously **assessed**, his letter of January 16, 1979 marks a **distinguishable** break from his traditional mode of inquiry. Se is now **asking for** a specific dollar **amount** of incurred expense reimbursement for **Carrier's**presumptive failure to apply the April 4, 1977 Protective Agree-
ment. He was entitled to a response, pursuant to the **clear language** of Rule 47(a) within the specified 60 day period. If the claim were frivolous or indefensible, Carrier could deny it on procedural or **substantive** grounds, but **it was** obligated to answer **claimant's** letter. Admittedly, V. L. Stoner's January 8, 1979 letter to General **Chairman** Mobry indicates that he was granted **protective** status, but this does not moot the claim or preclude Claimant from **filing** a **petition**. As en **employe**, who submitted a claim on his behalf, he provided sufficient **information** in his January 16, 1979 letter to **permit** **Carrier** the opportunity to act upon it.

In Third **Division** Award 10500, which conceptually supports this case, we stated in pertinent Part that:

"Carrier failed to give written notice, within sixty days, of the **reasons** for **disallowance** of **claims** filed December 5, 1955. It would **appear** from the reading of the claims, on their face, they are valid ones. Had the Carrier desired to controvert the facts involved in the dispute or attacked the validity of the claims **it would** have been a simple **matter** for It to have done so by denying or disallowing the claims in writing within a **period** of sixty days. This procedural section is mandatory rather than directive in that a definite penalty is provided therein for **failure** to write disallowance of claim within sixty days - the claim to be allowed as presented."

In the instant case, we find that Claimant's **January** 16, 1979 letter constituted a claim under **Rule 47(a)** and Carrier was obligated to disallow it within **the** required time period.

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:



Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.