NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23901
Docket Number MW-23309

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Missouri Pacific Railroad Company

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

(1) The discipline assessed Trackman Hosea Hollie was without just and sufficient cause (Carrier's File S 310-238).

(2) General Manager G. T. Graham failed to disallow the claim (appealed to him under date of September 1, 1978) as contractually stipulated within Agreement Rule 12, Section 2(a).

(3) As a consequence of either or both (1) and/or (2) above, Claimant Hosea Hollie shall be allowed

> '8hours each work day, including any holidays falling therein, at his trackman's straight time rate of pay beginning April 4, 1978, continuing until reinstated to service with seniority, pass and vacation rights unimpaired." "

OPINION OF BOARD: The claimant was notified to report for an investigation concerning certain specified activity.

Subsequent to the Investigation, the Employe was dismissed from service.

The claim was submitted on appeal to the General Manager on September 1, 1978, but a response was not issued until November 10, 1978, which was past the 60-day time limit specified in Rule 12, Section 2(a) of the agreement. Accordingly, the Organization asserts that the Carrier is required to allow the claim "as presented."

We have considered the assertion that the matter was improperly appealed to this Board, but we are not inclined to dismiss a consideration of the case based upon that assertion.

it appears clear from a review of the record in this case that the Carrier failed to answer the appeal in a timely manner end, accordingly, we are incline:? to honor tine claim for compensation for the period of time until the appeal was answered in November of 1978. The only question to be resolved then is whether or not outside earnings should be deducted.

The agreement states that if a claim is not answered within the contractually specified time period, it shall be allowed "as presented." Thus, discussions of other Sections of the Agreement are not persuasive and we will not permit the Carrier to deduct any outside earnings.

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 Employes involved in this dispute are respectively Carrier and Employes 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1982.