

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25093
Docket Number MW-24158

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Duluth, Winnipeg and Pacific Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to compensate the laborers assigned to the Tie Gang (Payroll Number 38200) for work performed in going to and/or from their work location and assembly point prior to, following and continuous with their regular assigned work period.

(2) General Manager **J. F. Corcoran** failed to disallow the claim (appealed to him in a letter dated August 21. 1980) in accordance with Sections (a) and **(c)** of Agreement Rule 21.

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

*The claim, as presented, will be reproduced within our initial submission."

OPINION OF BOARD: This dispute concerns the overtime claims of laborers assigned to the Tie Gang for work performed in going to and/or from their work location and assembly point prior to, following and continuous with their regular assigned work period.

As in Award 25091, the Petitioner raises a threshold procedural issue. The Organization argues that the authorized officer of the Carrier failed to timely respond in Step III of the Grievance procedure in violation of Rule 21 of the Agreement derived from the 1954 National Agreement, provides as follows:

Rule 21.

"(a) All claims or grievances must be presented in writing by or on behalf of the **employees** involved, to the Officer of the Carrier authorized to receive same, within sixty (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 **sixty** (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.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Carrier shall

be notified in writing within that time of the rejection of his decision. Failing to comply with this provision the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement at any stage of the handling of the claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(c) The requirements outlined in Clauses (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 nine (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 by agreement in any particular case extend the nine (9) months' period herein referred to. "

The record indicates that the claim herein was timely presented to the Roadmaster and the Chief Engineer. Finally, on August 21, 1980 the Step III appeal was made to the General Manager. The Carrier's response at Step III was from R. A. Olson, Labor Relations and Personnel Officer. By letters dated April 26 and May 15, 1981, the Organization wrote to the General Manager specifying that there has been a default by Carrier in that Mr. Olson had responded to the Step III appeal rather than the General Manager, Carrier's highest appeal officer.

This Board, with this Referee sitting, in Award 25091, after reviewing Award 23943 and the contract arguments and facts in Award 25091, concluded that the opinion reached in Award 23943 was correct, and that Carrier erred in permitting Mr. Olson to respond to the Step III appeal rather than the General Manager to whom they had been addressed. Therefore, it is apparent that the Carrier violated the Agreement. Under the circumstances, we cannot reach the merits in this dispute.

Continuity in the interpretation of contract rules is highly desirable, and such interpretations should not be overruled without strong and compelling reasons. There is nothing presented in the consideration of the instant decision which in any meaningful way can serve to distinguish the rationale of the decision in this dispute from that in Award 23943 since it involves interpretation of contract language. The parties are the same, the agreement is the same, and the facts are virtually identical. Accordingly, we conclude that the opinion reached in Award 23943 is hereby confirmed.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of **October, 1984.**