

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25165
Docket Number MW-25059

Martin F. Scheinman, Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: (**Escanaba** and Lake Superior Railroad Company

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

(1) The six (6) days of suspension imposed upon Section Laborer E. R. Erickson for alleged insubordination on February 19, 1981 was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement (System File ELS 1730).

(2) The claim as presented to Director Field Operations W. F. Drusch on April 24, 1981 by the General Chairman shall be allowed as presented because said claim was not disallowed by Director Field Operations W. F. Drusch in accordance with Rule 52(a).

(3) As a consequence of either (1) or (2) above

"Claimant must be compensated at his **applicable rate** for all time lost as a result of the discipline assessed and have his record cleared of the charge, as per Rule 51(c)."

OPINION OF BOARD: At the time this dispute arose, Claimant, E. R. Erickson, was employed by Carrier as a Section Laborer assigned to the Ontonagon Section, Ontonagon, Michigan. On February 16, 1981, Carrier sent Claimant a notice ordering him to appear for an investigation in connection with his alleged failure to assist in the freeing of personnel from a snow **clogged** train at Mass, Michigan on February 11, 1981.

An investigation on this matter was held on February 19, 1981. By letter dated February 24, 1981, Carrier assessed Claimant six days suspension without pay.

On April 24, 1981, the Organization appealed Carrier's assessment of discipline. According to the Organization, Carrier never responded to its appeal. In any event, the Organization notified Carrier of its desire to seek a conference on this matter via certified letter, dated September 16, 1982. Thereafter, the claim was submitted to this Board for adjudication.

The Organization maintains that Carrier's failure to respond to its initial claim merits a sustaining award. It points out that Rule 52(a) requires Carrier to answer claims within sixty days after they are presented. If the Organization is not so notified, "the claim or grievance shall be allowed as presented,...". Accordingly, the Organization concludes that the claim should be sustained on procedural grounds alone.

Carrier, on the other hand, maintains that the Organization is guilty of **laches**. It points out that the Organization did not process the claim to this Board until some two years after it was initially submitted. In Carrier's view, the Organization's delay in processing the claim constitutes abandonment. Accordingly, Carrier reasons that the claim should be denied on the grounds of **laches**.

After reviewing the record evidence, we are convinced that the claim must be sustained. The record reveals that Carrier did not respond to the Organization's initial claim. Rule 52(a) requires that claims must be denied within sixty days. Otherwise claims will be allowed as presented. Thus, the claim must be sustained in accordance with Rule 52(a).

The failure of Carrier to timely respond to this claim invalidates its contention that the Organization is guilty of **laches**. Upon the expiration of Carrier's time to respond, the claim had to be sustained.

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

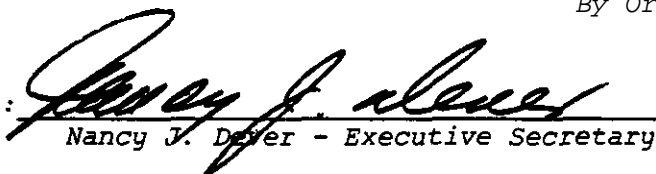
That the Agreement was violated.

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 30th day of November 1984