

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25167
Docket Number MW-25123

Martin F. **Scheinman**, Referee

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

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

(1) The four (4) days of suspension imposed upon **Trackmen** J. G. **Helgren** and J. A. **Vermullen** for alleged failure "to follow instructions as issued by the General **Foreman** when you drove to **Kiernan** rather than working from the **yard**" and for alleged failure to inform the General Foreman "of damage to the rail drill as instructed by bulletin dated January 5, 1981" was without just and sufficient cause and on the basis of unproven charges (System File ELS-1764).

(2) The claim as presented to Director Field Operations W. F. Drusch on April 22, 1981 by Assistant General Chairman F. M. Larson 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 or both (1) and/or (2) above

"**Mr. Helgren** and Mr. **Vermullen** be allowed pay for all time lost and that the discipline be stricken from their personal records:

OPINION OF BOARD: At the time this dispute arose, Claimants, J. G. **Helgren** and J. A. **Vermullen**, held seniority as Section Laborers at **Channing**, Michigan. By letter dated March 6, 1981, Claimants were directed to attend a formal investigation in connection with their alleged failure to fulfill daily work orders of General Foreman J. Hodges on March 5, 1981.

The investigation was held on March 16, 1981. As a result, Carrier suspended Claimants four days without pay.

The Organization appealed Carrier's assessment of discipline on April 22, 1981. According to the Organization, Carrier did not respond to this claim. Subsequently, the claim was appealed to Carrier President, J. M. **Larkin**, on December 8, 1981. Thereafter the claim was processed to this Board for adjudication.

The Organization contends that Carrier failed to respond to its initial claim. It points out that Rule 52(a) of the Agreement requires that claims or grievances must be denied within sixty days after they are initiated or they will be "allowed as presented". Thus, the Organization reasons that the claim should be sustained on this basis alone.

Carrier, on the other hand, maintains that the Organization is guilty of laches. It points out that the Organization appealed the claim to this Board approximately twenty months after the last record of handling on the property. In Carrier's view, such delay constitutes abandonment of the claim. Accordingly, Carrier concludes that the claim should be denied on the grounds of laches.

On the merits, Carrier asserts that there is ample evidence in the record to support a finding of Claimants' guilt. Therefore, Carrier asks that the claim be rejected on its merits as well as on procedural grounds.

Upon review of the record evidence, we are convinced that the claim must be sustained. The record reveals that **Carrier** failed to respond to the Organization's **initial** appeal. Rule 52/a) requires that such failure must result in allowing the claim as presented. Had Carrier timely answered the claim, its position might be supported here. However, its failure to do so requires a sustaining award.

Furthermore, the **Organization's** delay in handling the claim cannot invalidate it. When Carrier failed to answer the Organization's **appeal**, it became liable for the claim as presented.

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

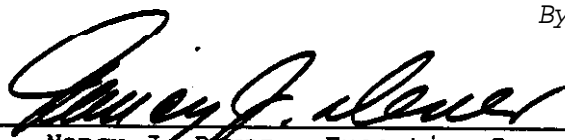
That the Agreement was violated.

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.