

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25215
Docket Number MW-25109

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 Agreement was violated when the Carrier failed and refused to pay **Trackman** Fred **Barron** mileage allowance (900 miles) for the use of his personal vehicle for traveling between his home station (**Ontonagon**) and **Amasa**, Michigan on October 26, 27, 28, **November** 2, 3 and 4, 1981 (System File **ELST-2809**).

(2) The claim as presented by Assistant General Chairman F. M. **Larson** on December 21, 1981 to Director Field Operations W. F. Drusch shall be allowed as presented because said claim was not disallowed by Mr. W. F. Drusch in accordance with Rule **52(a)**.

(3) As a consequence of either or both (1) and/or (2) above, **Trackman** Fred **Barron**

be reimbursed at the prevailing rate for a total of 900 miles.

OPINION OF BOARD: At the time this dispute arose, Claimant, F. **Barron**, held seniority as a **Trackman** regularly assigned to a section gang headquartered at **Ontonagon**, Michigan. On the claim dates in October and **November** 1981 Claimant's gang was required to perform services at **Amasa**, **Michigan**, some seventy-five miles from **Ontonagon**. Claimant transported his section gang to and from the work site on these dates. Thereafter, he submitted a request for mileage reimbursement. Carrier denied the request.

On December 21, 1981, the Organization filed this claim on Claimant's behalf. According to Carrier, it received the claim on December 24, 1981 and denied it via letter dated February 21, 1982. The Organization asserts that it did not timely receive Carrier's denial. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier failed to timely respond to its initial claim submission. It points out that claims must be denied **within** sixty days of filing, or deemed accepted as presented. Here, the Organization filed its claim on December 21, 1981. On February 19, 1982, sixty days later, it had not **received Carrier's response**. Thus, the Organization reasons that the claim should be sustained on this ground alone.

As to the merits, the Organization asserts that **Carrier** violated Rule 39 when it denied **mileage** reimbursement to the Claimant. That Rule reads:

***Employees** will be reimbursed for necessary expenses incurred while away from their regular outfits or regular headquarters by direction of the Management, whether off or on their assigned territory. This rule not to apply to **employees** traveling in exercise of their seniority rights."

In the Organization's view, Claimant was required to use his personal automobile from **Ontonagon** to **Amasa**, Michigan. Furthermore, it argues, Claimant was improperly denied mileage reimbursement in accordance with Rule 39. As such, it asks that the claim be sustained on its merits.

Carrier, on the other hand, denies that it violated the Agreement. First; it contends that it received the Organization's claim via **regular** mail, on December 24, 1981. It answered the claim on February 21, 1982, fifty-nine days later. Thus, Carrier argues that it denied the claim within the sixty-day time limit specified by Rule 52.

On the merits, Carrier asserts that it notified Claimant that he had an option - to be furloughed or to have his assignment changed to **Amasa**. AS such, Carrier concludes that it altered Claimant's assembly point in accordance with the Agreement and past practice on the property. Accordingly, it asks that the claim be rejected in its entirety.

Our review of the record evidence convinces us that the claim must fail. This is so for a **number of** reasons.

First, the exchange of claim and denial was accomplished via regular mail. As such, no definitive record exists as to the date Carrier actually received the Organization's claim. Under these circumstances, Carrier's contention that the claim was received on December 24, 1981 is both reasonable and unrefuted. Thus, Carrier's denial on February 21, 1982 was within the sixty-day time limit. Accordingly, Carrier complied with Rule 52 here.

As to the merits of the claim, Rule 27 reads:

***Employees** time will start and end at a regular designated assembling point for each class of employees which will be the tool house, outfit car, or shop.'

That Rule refers to a 'regular designated assembling point". It does not require that such **pint** be communicated in writing to Claimant. The record indicates that Carrier verbally notified Claimant that he would be furloughed or that he could **accept a** change in assembly point. Nothing in the Agreement barred Carrier from so informing Claimant. Under these circumstances, Carrier changed **Claimant's** assembly point in accordance with Rule 27. Since Claimant's assembly point was changed to **Amasa**, Carrier was not obligated to reimburse Claimant for mileage expenses when he performed services at that site on the claim dates. Accordingly, and for the foregoing reasons, the claim is denied.

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

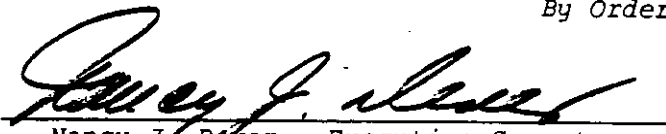
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD .
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.