

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25309
Docket Number NW-25254

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Consolidated Rail Corporation
(Former Lehigh Valley Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned hauling, grading, cutting and burning work in connection with the "**Allentown** Yard Project" to outside forces (System **Docket** LV-138).

(2) The claim as presented by District Chairman R. **MKoval** on March 5, 1979 to Division Engineer R. C. Archihofsky shall be allowed as presented because said claim was not disallowed by Division Engineer R. C. Archihofsky. in accordance with Rule 5-c as amended.

(3) As a **consequence** of **either** or both (1) and/or (2) above the furloughed claimants shall each be allowed

"eight (8) hrs. per day, at the appropriate rates of the jobs these employees held prior to such **abolishments**."

OPINION OF BOARD: By specific letter of Agreement between the Organization and Carrier over the contracting of work to be done at the Allentown Yard in Allentown, Pennsylvania, it was agreed on September 8, 1978 in part that "**no** Track **Department** employees in the Seniority District will be furloughed" while contractor's forces were still working the Allentown Yard. On March 7, 1979 the Carrier received by certified mail a claim on behalf of "**all** people, furloughed on February 23, 1979 and all furloughed people on the February 28, 1979 job **abolishment**". On March 12, 1979 the District Chairman sent a second letter to the same Division Engineer with whom the claim had been initiated. That letter referenced **forty-two (42)** furloughed Track **Department employees** for whom the claim of eight (8) hours **per** day at their appropriate rates of pay should **be** paid. After receiving no response the District Chairman sent a letter of May 18, 1979 requesting Carrier payment **due** to the merits of the claim **and** also "**due** to the violation of time limits **involved**". These time limits state that claims must be filed by the Organization "within 60 days from the date of the occurrence" of the claim, be responded to by the Carrier if declined "**within** 60 days from the date **same** is filed., **or** *the claim or grievance shall be allowed as presented.. The Organization maintained Carrier violation Of the time-limit provisions of Rule 5-C as amended in the controlling Agreement end therefore argued the claim should be allowed.

On June 19, 1979, Carrier's Manager of Labor Relations, responded to the organization's request for payment. In that response, he indicated that the claim had been denied in a Letter of April 5, 1979 by the Division Engineer and therefore there was no violation of the Time Limit on Claims. The facts of the claim were disputed and appealed by the Organization up to and including the highest Carrier Officer designated to hear such appeals. ~~Not being resolved~~ this claim is **now** properly before the Third Division of the National Railroad Adjustment Board.

The central issue in the case at bar, lies not in the merits of the case, but in the procedural issue of the alleged time limit violation and the conflicting evidence in the record as handled on property. The Organization claims that it never received the letter of April 5, 1979 to disallow the claim. The Carrier claims that the letter was sent by the U.S. postal service **and** it produced a copy of the letter from its files, unsigned by the Division Engineer, which responds to the undated letter of March 5, 1979 **and** denies the claims.

In ruling on this procedural issue, this Board must consider both precedent and substantial evidence of record. There is considerable past precedent that it is the responsibility of Carrier to unequivocally assure that letters of declination are properly delivered to the appropriate Organization official within the stated time limits (Third Division Awards 10173; 11505; 14354; 16163; 25100). With respect to **substantial** evidence, this **Board** has long held that assertions alone that letters have been mailed will not suffice. Specific to the case at bar where such problems have already **occurred**, it is even more incumbent that attention be paid to the issue of meeting the evidence test that such letters were sent as argued. Carrier assertions alone that letters were mailed, even when copies of such letters are produced, do not provide the necessary evidence required in cases of dispute which come before this Board (**see** Third Division Awards 17291, 10173, 10742).

Therefore, the claim must be sustained on procedural grounds. Carrier **objections** to the claim as 'vague and indefinite' or failing to indicate 'how claimants were effected' have been carefully reviewed and are dismissed as this claim is in the mind of this Board, lacking any procedural deficiency. In addition it should be noted that discrepancies found in the record **between** the materials presented on property and those presented to the Board by either party in their Submissions have been dealt with by treating the latter as inadmissible.

As such, considering the record as developed on property, this Board firmly holds that ~~from~~ February 23, 1979 through and to include, February 28, 1979, each of the **forty-two (42)** Claimants listed by letters of March 12, 1979 and July **18**, 1979, shall be allowed payment as requested in part **(3)** of the **Claim**.

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

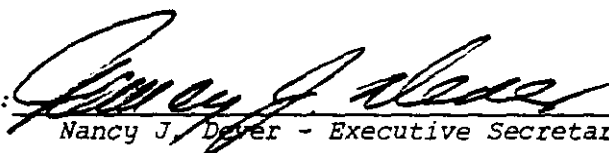
That the Agreement was violated.

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 28th day of February 1985.