NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25493
THIRD DIVISION Docket Number MW-25630

M. David Vaughn, Referee

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

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

(1) The claim* as presented by Assistant General Chairman F. M. Larson on April 8, 1982 to Director Field Operations W.F.Drusch shall be allowed as presented because the claim was not disallowed by President John Larkin (appealed to him on June 18, 1982) in accordance with Paragraphs (a) and (c) of Rule 52 (System File ELST-3009).

*The letter of claim will be reproduced within our initial submission.

OPINION OF BOARD: Cm or about March 15, 1982, Carrier recalled to service P. Wagner and D. LeGault to fill vacant Trackmen positions on the section crew headquartered at Ontonagon, Michigan. At that time, Claimants M.Wilcoxen, J. Walling, J. Hedler and W. Latvis held seniority as Trackmen.

As a result of Carrier's action, the Organization filed a claim on April 8, 1982, which was denied by Carrier's Director of Field Operations W. F. Drusch on April 20, 1982. The Organization appealed the denial to President John Larkin on June 18, 1982 but received no response to that appeal.

On March 24, 1983, the Organization notified Carrier that the claim must be allowed under Rule 52 of the Agreement. That rule reads, in relevant part:

> "(a) All claims or grievances must be presented in writing by or on behalf of the employee 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 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.
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> (c) The requirements outlined in paragraphs (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..."

Carrier responded that the claim was barred under the doctrine of laches in a letter dated March 30, 1983. The Organization notified the Carrier of its desire to seek a conference on the matter on May 27, 1983, and thereafter brought the claim before the Board on December 29, 1983.

The Organization argues that Carrier's failure to disallow its appeal of June 18, 1982 within the sixty day limit imposed by Rule 52 requires that the award be sustained on procedural grounds. The Carrier does not deny that it was required to respond within 60 days.

The Carrier maintains that the claim, including any enforcement of Claimant's rights under Rule 52, is barred under the doctrine of laches. Carrier notes that the Organization did not process the claim to this Board until 16 months after the date by which Carrier was required to respond to the appeal and argues that this delay constitutes abandonment. It argues further that the claim is now moot.

A review of the record convinces the Board that the claim must be sustained. Under Rule 52, a claim must be allowed as presented if the Carrier fails to disallow the claim within the 60 day limit. See Third Division Award 25122.

It is further noted that Carrier's failure to respond to the appeal contributed to the Organization's delay in proceeding this claim to the Board. Thus, even in the absence of Rule 52, the Carrier's contention that the claim should be rejected on the basis of laches would not prevail.

The record does not support Carrier's assertion that the claim is now moot. A claim for back pay is not rendered moot merely because the Claimant is no longer employed by the Carrier. Thus, the claim will be allowed as presented, except that a review of Carrier's records will determine any applicable cutoff date.

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 Employes involved in this dispute are respectively Carrier and Employes 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.