

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26684

Docket Number MW-26467

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it assigned junior employe C. J. Christian instead of Mr. S. L. Vesnefskie to fill a temporary mechanic's vacancy on Rail Gang No. 101 on June 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, July 1, 4, 5, 6, 7 and 8, 1983 (System Docket CR-598).

(2) The claims* as presented by Claimant S. L. Vesnefskie on June 26, 1983 and July 22, 1983 to Production Engineer T. Smallwood, shall be allowed as presented because Production Engineer Smallwood failed to disallow said claims as contractually stipulated within Rule 26(a).

(3) As a consequence of either or both (1) and/or (2) above, Mr. S. L. Vesnefski shall be compensated for all time earned by junior employe C. J. Christian on June 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, July 1, 4, 5, 6, 7 and 8, 1983.

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

OPINION OF BOARD: The Claims herein were filed on June 26 and July 22, 1983, and dealt with alleged improper assignments to a temporary repairman's position. The Claims were addressed to the Production Engineer. On August 12, 1983, the Assistant Production Engineer responded to both Claims, denying their validity.

The Organization argues that Carrier violated the Agreement when the Assistant Engineer rather than the Production Engineer responded to the Claims. The Organization cites Rule 26, which provides in relevant part as follows:

"RULE 26 - CLAIMS AND GRIEVANCES

(a) A claim or grievance must be presented, in writing, by an employee or on his behalf by his union representative to the Division Engineer or other designated official within sixty (60) days from the date of the occurrence on which the claim is based. The

Division Engineer or other designated official shall render a decision within sixty (60) days from the date same is filed, in writing, to whoever filed the claim or grievance (the employee or his union representative). When not so notified, the claim will be allowed.

* * *

(i) It is understood in applying this Rule that those designated at the following locations are substituted for the Division Engineer:

Canton MW Shop	- Shop Superintendent
Reading Frog & Switch Shop	- Shop Superintendent
Toledo Welding Plant	- Plant Superintendent
Columbus Welding Plant	- Plant Superintendent
Luchnow Welding Plant	- Plant Superintendent
<u>Inter-Regional Units</u>	<u>- Production Engineer"</u>

Carrier maintains that the Organization is hyper-technical in its application of Rule 26 and that Claimant was not misled or prejudiced by the decision from the Assistant Production Engineer. Carrier also argues that the Assistant Production Engineer is responsible for the day-to-day operations of the rail gang, as is the Production Engineer and the Assistant operates with the same authority as his superior.

Rule 26(a) and (i) designate not only the Carrier Officer to whom the Claim is to be presented in the first instance, it also stipulates who shall reply. The Carrier Officer so designated is the Production Engineer. Another, other than the Production Engineer, responded. In Award 21297 of this Board we held:

"Previous Awards of this Board have held that the Officer of Carrier designated by Carrier to receive claims or grievances must be the one to reply to same."

Also, see Awards 18002, 17696 and 4529, as well as Award No. 14 of Public Law Board No. 1844 for similar consistent holdings.

We cannot reach the merits of this Claim in view of the apparent violation of Rule 26(a) and (i); the Claim must be paid 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

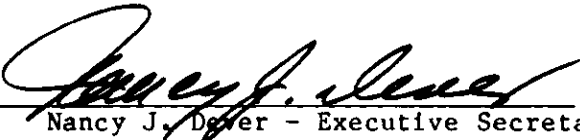
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
by Order of Third division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.