Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27692
THIRD DIVISION Docket No. MW-26954
89-3-85-3-727

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

(1) The three (3) claims* as presented by Trackman J. Chapman on December 13, 1983 to Division Engineer D. S. Cargill shall be allowed as presented because the claims were not disallowed by Division Engineer D. S. Cargill in accordance with Rule 26(a) (System Docket CR-1171).

(2) The three (3) claims* as presented by Trackman J. Chapman on December 13, 1983 to Division Engineer D. S. Cargill shall be allowed as presented because the claims were not disallowed by Manager-Labor Relations J. A. Rice (appealed to him on May 18, 1984) in accordance with Rule 26(b).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By three separate claims dated December 13, 1983, completed on preprinted claim forms, Claimant asserted that three specifically named employees were performing work as a trackman, bus driver and/or foreman on specified dates in October through December, 1983, at different specific locations in Indiana. By letter dated March 22, 1984, the Division Engineer responded that:

"Information furnished is not specific enough to allow us to investigate your claims.

Therefore, your claims are denied in their entirety."

Rule 26 provides in pertinent part:

> "(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."

The claims must be sustained under the clear language of Rule 26(a). It is undisputed that by not responding to the December 13, 1983 claims until March 22, 1984, the Carrier did not "render a decision within sixty (60) days from the date same is filed" as required by Rule 26(a). The result is dictated by the negotiated language of the rule. "When not so notified, the claim will be allowed." [Emphasis added].

The Carrier argues, however, that the claims were vague and indefinite and hence invalid and void ab initio, and therefore no response was required. We disagree. The underlying premise for such an argument is that the claims, as written, were vague and indefinite. Our review of the three claims shows that premise to be faulty in that the claims are quite specific. The three claims all identify Claimant as the individual bringing the claims, the fact that they were time claims, the names of the individuals alleged to have improperly performed the claimed work, the specific locations where the alleged contract violations took place, the exact dates of the alleged violations, the specific types of work performed in alleged violation of the Agreement and the specific amounts of time sought.

Thus, by operation of the Agreement and because the claims involved herein are not of a continuing nature, the Carrier's failure to respond within the 60 day period automatically requires that the claims be allowed. In this case, any other interpretation would render the negotiated language found in Rule 26(a) meaningless. See Third Division Award 25309 wherein a time claim was sustained under similar language where the Carrier failed to timely deny the initial claim notwithstanding a rejected allegation that the claim was vague and indefinite.

The line of awards cited to us by the Carrier wherein untimely responses to claims did not result in sustaining awards does not change the result in this case. For example, Third Division Award 19766 concerned a damage claim to the employee's automobile which the Board viewed in the nature of a tort and not involving the terms of the parties' agreement. Second Division Award 9321 concerned a safety claim that the Board interpreted as being outside of its jurisdiction. Fourth Division Award 4590 and Third

Division Award 25856 involved duplicate claims that were earlier adjudicated and dismissed under the principle of res judicata. Those awards are factually different from the present case. However, we do find relevant the observation made to the Carrier in Fourth Division Award 4590, supra:

> "The Carrier should take strong note that the time limits issue raised by the Organization is a serious issue for this Board. As stated by the Board in Third Division Award 25856:
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> > 'The Carrier is cautioned ... that under the time limit Rules it is required to respond to Claims within the time limits specified even though it may consider the Claims involved as barred or otherwise defective.'"

The parties have expended much effort arguing about what occurred after the Carrier untimely denied the claims. Specifically, the parties' arguments address the ramifications of the change of address of the Organization's Vice Chairman and the fact that he allegedly did not receive the Carrier's August 30, 1984, letter (asserted by the Carrier to have been mailed to his former address) until October 10, 1984. Because of that late receipt, both parties argue each other's further handling of the matter to be untimely under other provisions of Rule 26. We need not address those arguments. Rules 26(b) and (c) both state that in order for the time limit provisions in those rules to operate, the claim or grievance must be "...denied in accordance with [the preceding] paragraph ...". Under Rule 26(a), when the Carrier fails to timely respond to claims, as a matter of contract, the claims "... will be allowed." Therefore, in this case, since the claims were "allowed" by operation of Rule 26(a), any denials that occurred after March 22, 1984, under Rules 26(b) or (c) were not "...in accord with [the preceding] paragraph." At the point the Carrier failed to initially deny the claims in this case, the matter was over. In this case, what happened thereafter is immaterial.

Because of our holding, the question presented in paragraph (2) of the claim need not be addressed.

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 2nd day of February 1989.