

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27987
Docket No. TD-27842
89-3-87-3-698

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

"Account Position No. 065 not bulletened [sic] in accordance with current agreement under rule 16 paragraph B items 1 and 2 I am claiming chief dispatcher rate of pay for the following dates:

Sept. 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28
29, 30

Oct. 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22,
25, 26, 27, 28, 29

Nov. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 26, 29, 30

Dec. 1, 2, 3.

Position 065 was open as a temporary vacancy when incumbent to position 065 W. R. Beaudoin was assigned to a temporary vacancy on position 036. Dispr. R. D. Weirich was allowed to move on Position 065 without this position being advertised as a temporary vacancy. Therefore, I [D. R. Dodson] being senior to dispr. Weirich should have been given an opportunity in writing to move on position 065."

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.

The central issue at bar is whether a decision by the Claimant to settle the dispute herein and the further non pursuit of this Claim for over two years mandates a dismissal or denial Award. The Carrier has clearly made that argument on property.

In the facts of this case, the Claimant personally filed a Claim dated January 2, 1985. He received no Carrier response. By letter dated March 19, 1985, Claimant notified Carrier that in accordance with the Time Limits on Claims (Rule 26), the Claim had to be allowed.

By letter dated January 26, 1987, the Organization requested information on when the outstanding Claim would be paid. The record thereafter evidences the following facts which form the core of this dispute. There is no denial by the Organization that the Claimant met with Carrier representatives in 1985 and verbally agreed not to pursue this Claim. The facts indicate that for over two years the Claim lay dormant. When the Organization pursued payment due to alleged violation of time limits, its representative to the on-property conference concurred that "the claim could not be retroactively progressed for more than sixty days from the date of the claim." As such, Carrier maintains that it paid Claimant the twenty four (24) days required. Carrier further argued that the doctrine of laches applied.

In our review of the procedural issue at the core of this dispute, the Board clearly finds the evidence to substantiate a Carrier violation. First, the Board does not accept the Claimant's agreement with Carrier officers to drop the Claim. Claimant's letters to the Carrier show no copies to the Organization, nor is there any evidence as to when the Organization became aware of the Claim. The Organization has the authority and responsibility to police its negotiated Agreement and it is not bound by an employee's settlement (Third Division Awards 20237, 4461).

Second, the Carrier has further argued that the Organization's representative concurred with the Carrier's settlement of the Claim during conference. The evidence of record does not support this position. Carrier's statements do not effectively demonstrate that the Vice President settled the Claim, but only that he had agreed to the principle of retroactive progression. The Claim was continuously pursued after that meeting.

Lastly, the Board does not agree that the doctrine of laches applies. The Carrier pursued this position arguing that the Claim was now barred (Second Division Award 4297; Third Division Award 25497). Although the Claim went unpaid for over two years before being pursued by the Organization, the time lag is not in and of itself sufficient to bar the Claim. There must be in evidence a showing by the Carrier that the delay resulted in damage or disadvantage in perfecting its defense. We find no probative evidence in this record that the delay caused any disadvantage to the Carrier in defending itself in the Claim at bar (Third Division Awards 24492, 25120; Public Law Board 629, Award No. 3).


On the basis of the record and the language of Rule 26 of the Agreement, the Claim is sustained. The Carrier's failure to respond within the time limits of the Agreement precludes this Board's consideration of the merits or validity of the Claim. With respect to the amount due Claimant, there is some evidence in the record that the Carrier agreed to pay Claimant for 24 days of the total days claimed. It is not apparent whether such payment has been made. Accordingly, we find that Claimant is entitled to the dates set forth in the Statement of Claim, to be offset by any of such dates for which the Claimant has already been paid.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.