

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28403  
Docket No. MW-28460  
90-3-88-3-236

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Duluth, Winnipeg & Pacific Railway Company

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

(1) The claim\* as presented by Acting General Chairman J. Ritacco to Assistant Engineer/Roadmaster R. Soger on May 12, 1987 shall be allowed as presented because said claim was not disallowed by Labor Relations & Personnel Officer R. A. Olson (appealed to him on July 7, 1987) in accordance with Rule 21 [System File #231/G.106-S(71/87)(S)].

\*The letter 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.

The Claimant herein contends that he should have been selected to perform work as a Flagman in preference to a junior employee, who was assigned the work.

In the claims handling procedure, the Claim was appealed to the Labor Relations and Personnel Officer in a letter dated July 7, 1987. This Carrier official responded by denying the Claim in a letter dated September 10, 1987.

The Organization alleges that the response was untimely and that the Claim should be granted on this basis. Rule 21, Claims and Grievances, reads in pertinent part as follows:

"(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 (60) 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 of [sic.] waiver of the contentions of the Carrier as to other similar claims or grievances."

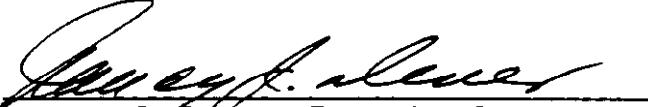
From the record on the property, the Board must conclude that the Carrier failed to disallow the Claim within 60 days from the date it was "filed". Under such circumstances, Rule 21 provides that the Claim must be "allowed as presented". The remedy shall provide for the applicable difference in pay for the Claimant.

In a matter involving the same parties, Third Division Award 25091, the importance of strict adherence to Rule 21 provisions is stressed.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dgver - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.