

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

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

(1) The claim as presented by General Chairman G. G. Western on June 5, 1985 to Regional Engineer G. A. Nilsen shall be allowed as presented because said claim was not disallowed by Regional Engineer G. A. Nilsen in accordance with Rule 13-1(a) (System File R219/800-46-B-205).

(2) The claim as presented by General Chairman G. G. Western on June 5, 1985 to Regional Engineer G. A. Nilsen shall be allowed as presented because the claim was not disallowed by Chief Engineer W. B. Peterson (appealed to him on July 22, 1985) in accordance with Rules 13-1(a) and 13-1(c)."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This claim as initially filed involved an assertion that certain bargaining unit work had been assigned to and performed by supervisors. The claim contended that the Claimants, who were the employees regularly assigned to perform this work during the work week, were available to perform the work on the Sunday on which it was performed.

The claim, filed June 5, 1985, was addressed to the Carrier's Regional Engineer, and the person whom the Parties agree was designated to receive claims of this nature. On June 10, 1985, the Assistant Regional Engineer sent back a reply to the Organization stating that the claim was denied.

On July 22, 1985, the Organization appealed the claim to the Carrier Officer designated to receive appeals. In this appeal, the Organization took exception to the fact that the original claim was answered by someone other than the addressee. According to the Organization, this was a violation of Schedule Rules 13(a) and 13(b). This appeal also was not answered by the addressee, but rather by the General Manager -- Engineering.

The Organization objected to the fact that its appeal also was not answered by the party to whom it was addressed. The Organization appealed the case further, but it was not resolved and therefore proceeded to this Board for resolution. Only the procedural issue remains.

The Organization contends that the Carrier violated Rule 13(a), which reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within 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 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 or waiver of the contentions of the Carrier as to other similar claims or grievances."

According to the Organization, the Carrier failed to deny the claim within the sixty-day time period because the claim was not disallowed by the "officer of the Carrier authorized to receive" the claim. The Carrier contends, on the other hand, that the rule provides only that the "Carrier" provide notification within sixty days, and in each case the Officers who denied the claims were Officers of the Carrier.

This Board previously has ruled on the issue of whether such a rule mandates that the Carrier Officer who is authorized to receive the claim must be the Officer who denies the claim as well. The Board's decisions have not been uniform.

However, this Board concludes that those decisions which hold as a general rule that only the Carrier Officer who is designated to receive a claim may properly deny it are not supported by the language in the Rule. Furthermore, there are differences between some of those cases and the case at issue here which suggests that a different result is appropriate in this case.

The language of Rule 13(a) requires the Organization to file a claim "with the officer of the Company authorized to receive same." However, the language mandating denial within sixty (60) days states only that "the Carrier shall ... notify." If the Parties had wanted to clarify that only the Carrier Officer designated to receive the claim may notify of its denial, they could have done so with plain language to that effect. Instead of stating that "the Carrier shall notify," the Parties could have said, "the officer designated to receive a claim shall notify...."

In several of the cases cited by the Organization the Parties made an agreement in which they did specifically include such language. For example, in Third Division Award 16508 the Carrier had specifically directed that claims,

"must initially be filed with the Division Engineer. Having been declined by him, they should be appealed to the Chief Engineer and the Director of Personnel in that order."
(Emphasis added).

In contrast, in the instant case there is no indication that the Parties had agreed to language that a claim could properly be answered only by the Party to whom it was initially addressed.

In addition, two recent decisions of this Board involving the same Parties, agreement and location and involving the same issue have been decided by this Board. In Third Division Award 27590 this Board noted that it had considered the same issues in Third Division Award 27179 and had determined that there was no merit to the procedural claims raised by the Organization, i.e. that a claim must be denied by the Officer to whom it is addressed. The Board sees no reason to deviate from these rulings in this opinion.

The Organization in this case has based its claim only on the automatic forfeiture provisions resulting from a failure of notice under Rule 13 and not on the merits of the original claim regarding bargaining unit work. Because this Board concludes that those forfeiture provisions do not apply the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.