

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company  
(former Missouri Pacific Railroad Company)

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

(1) The claim\* as presented by General Chairman L. W. Borden on September 16, 1988 to Manager of Program Services J. J. Stoner shall be allowed as presented because Mr. Stoner failed to disallow the claim in accordance with Rule 12, Section 2(a) (Carrier's File 880705 MPR).

\*The initial 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.

This matter is appealed to this Board solely on an allegation that Carrier violated the provisions of Rule 12 of the Agreement when it failed to deny a Claim within 60 days of the date filed. The material in the record supports a conclusion that a Claim was presented Carrier under date of September 16, 1988, which was not timely denied. On December 16, 1988, Carrier was advised that a decision had not been rendered on the Claim within 60 days of the date it was filed. It was not until February 14, 1989, that a denial was issued.

The Claim must, therefore, be allowed as presented. However, by reason of the decision in NDC-16, as this was a "continuing claim," Carrier's liability terminated as of the date the Claim was eventually denied, February 14, 1989. Appeal was not taken on the property on the merits of the Claim, nor have the merits been addressed by the Organization before this Board.

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92-3-90-3-3

Accordingly, we can only deal with the time limit violation. Claimants are entitled to be paid at the machine operator's rate of pay beginning July 19, 1988, until February 14, 1989, as provided in Rule 28, for each date they operated spike pulling machines on System Rail Gang 9103.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dewar - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.