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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29797
Docket No. MW-30061
93-3-91-3-473

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Western Lines)

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

The claim* as presented by District Chairman C. D. Rich on April 17, 1989 to Mr. G. A. Greblo shall be allowed as presented because said claim was not disallowed by him in accordance with Rule 44 (Carrier's File MofW 152-1117 SPW).

*The initial 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 employe 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.

Carrier contracted with the Overhead Door Company to install fifteen roll-up steel doors at its facilities in the Eugene, Oregon Roundhouse in February-March 1989.

On April 17, 1989, the Organization filed the present claim alleging violations of Rules 1,2,3,5 and 44. According to the Organization, Carrier failed to make a timely denial of that claim within sixty days. Therefore, the Organization's sole basis of appeal to this Board is that the claim must be "allowed as presented" under Rule 44 the Time Limits Rule. In other words, the

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claim was progressed to this Board exclusively on the time limit issue with no reference to the merits of the case.

For its part, Carrier maintains that the claim of April 16, 1989, was in fact denied in timely fashion by a letter from the Carrier, dated June 16, 1989, a copy of which was presented to the Organization in handling on the property.

After a careful review of the requisite evidence, this Board concludes that the Organization has not persuasively established that Carrier violated the time limits of Rule 44 in denying this claim. On that basis, we must dismiss the claim for failure of proof. No opinion is expressed or implied concerning the merits of the underlying claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.