

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30197
Docket No. MW-28738
94-3-89-3-124

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr., 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 Agreement was violated when the Carrier assigned outside forces to perform equipment maintenance work in the yards at North Little Rock, Arkansas beginning March 16, 1987 (System File 870373 MPR).
- (2) The Carrier also violated Article IV of the May 17, 1968, National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.
- (3) The Agreement was further violated when the claim as presented by Assistant General Chairman G. L. Barker on April 16, 1987 to Regional Engineer G. R. Lilly was not disallowed by Regional Engineer G. R. Lilly in accordance with Rule 12, Section 2(a).
- (4) As a consequence of the violations referred to in Part (1), and/or (2), and/or (3) above, Work Equipment Mechanics G. L. Sales and L. D. Sales shall each be allowed pay for:

"... 40 hours per week straight time, and 40 hours per week time and one-half rate, at the WEM rate of pay, from March 16, 1987, to continue, until positions are bulletined and assigned to the MofW WEM class of Employees."

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.

The Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Beginning March 16, 1987, employees of the Herzog Construction Company (Company) performed maintenance in the Carrier's yards at North Little Rock, Arkansas, upon equipment rented by the Carrier from the Company. Two Company employees each performed eighty hours work per week maintaining and repairing the rental equipment which was utilized by the Carrier's maintenance of way employees assigned to the yards. At the time Claimants held seniority as work equipment mechanics in the yards and were on furlough due to force reduction.

On April 16, 1987, the Organization's Assistant General Chairman filed a claim on behalf of Claimants with the Carrier's Regional Engineer challenging the propriety of the arrangement under applicable Agreements. The Regional Engineer received the claim on April 20, 1987.

On April 27, 1987, both Claimants returned to service from furlough. However, Claimant L. D. Sales worked only five days before he returned to furloughed status. On May 10, 1987, Claimant Sales again returned to service from furlough.

By July 23, 1987, the Regional Engineer had not responded to the initial claim, and on that date the Organization wrote the Carrier requesting payment of the claim both on the merits and under Rule 12, Section 2(a), of the applicable schedule Agreement for a violation of the time limits therein.

On August 21, 1987, the Regional Engineer wrote the Assistant General Chairman denying the claim. The dispute remains unresolved, and it is before the Board for final and binding determination.

The record in this case clearly establishes, and the Carrier candidly admits, that the Regional Engineer did not deny the initial claim in this case until August 21, 1987. Such inaction by the Carrier violated Rule 12, Section 2(a), of the Agreement which provides in pertinent part that if the Carrier disallows a claim or grievance it must do so "... within 60 days from the date same is filed,...." The Rule further provides that if the claim or grievance is not denied as provided in the Rule it "... shall be allowed as presented,..." without precedent.

Recently this Board in the Third Division Award 29922, involving a dispute identical to the one in this case, except for the period of time covered by the claim, ruled that the Carrier's failure to deny a claim timely under Rule 12, Section 2(a), exposes it to liability only until it denied the claim. That Award clearly is precedential with respect to the instant case. Clearly the Carrier's liability under Rule 12, Section 2(a), in this case cannot extend beyond August 21, 1987, the date the Regional Engineer denied the initial claim. However, we believe the Carrier's liability in this case is restricted further by Award 29922. The time period covered by that Award is from May 8 through October 30, 1987. Accordingly, the Claim in this case is valid under Rule 12, Section 2(a), only through May 7, 1987.

We recognize that the Claim in this case is before this Board not only under Rule 12, Section 2(a), but also on the merits, a factor not involved in the claim decided by Award 29922. However, inasmuch as the record in this case indicates that the time period covered by Award 29922 encompasses the time during which Claimants could have had a valid claim on the merits in this case, the question is moot.

AWARD

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.