

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30909
Docket No. MW-30016
95-3-91-3-412

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
(
(Consolidated Rail Corporation

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

(1) The Agreement was violated when the Carrier abolished a Track Department position and transferred work from Hawthorne Maintenance of Way Material Yard at Indianapolis, Indiana to the Fisher Road Distribution Center at Columbus, Ohio where clerical employees were assigned to perform the work (System Docket MW-1211).

(2) The claim as presented by Mr. C. Perry Rapier on April 12, 1990 to Division Engineer W. B. Kerchof shall be allowed because said claim was not disallowed by Division Engineer W. B. Kerchof in accordance with Rule 26(a).

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the senior furloughed Class 1 Operator and the senior furloughed vehicle operator on the Columbus Maintenance of Way Track Department roster, and if not furloughed in said classes, the Claimants are to be found on the Trackman Roster, shall be paid eight (8) hours for each scheduled workday beginning April 23, 1990 and continuing until the instant matter is resolved."

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 employee 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.

In this dispute, the Transportation Communications International Union was notified as a Third Party at interest, but did not provide a submission.

The Organization submits that the claim should be sustained as presented based on the Carrier's failure to comply with the provisions of Rule 26(a), which reads as follows:

"(a) A claim or grievance must be presented, in writing, by an employee or on his behalf by his union representative to the Division Engineer or other designated official within sixty (60) days from the date of the occurrence on which the claim is based. The Division Engineer or other designated official shall render a decision within sixty (60) days from the date same is filed, in writing, to whoever filed the claim or grievance (the employee or his union representative). When not so notified, the claim will be allowed."

The claim concerns work performed at the Carrier's Fisher Road Distribution Center. The initial claim response came from the a Material Manager. Because of the failure of the Division Engineer to answer the claim, the Organization argues it must be allowed. In response, the Carrier points out that the Rule provides for reply by "other designated official" and that the Material Manager was such a person.

In rebuttal to this, the Organization points to Rule 26(i) which reads as follows:

"(i) It is understood in applying this Rule that those designated at the following locations are substituted for the Division Engineer:

Canton MW Shop	- Shop Superintendent
Reading Frog & Switch Shop	- Shop Superintendent
Toledo Welding Plant	- Plant Superintendent
Columbus Welding Plant	- Plant Superintendent
Lucknow Welding Plant	- Plant Superintendent
Inter-Regional Units	- Production Engineer"

The Organization argues that these are the only "designated" officials contemplated in Rule 26(a). Support for this view is found in Third Division Award 26684, involving the same parties, which cited previous Awards in finding that the Rule must be

interpreted narrowly to provide for Carrier reply from one of the named officials in Rule 26(a) or (i).

The Board comes to the same conclusion here. Since the remedy sought under the claim is a continuing one, however, there is no basis for allowing the claim on a procedural basis beyond the date when the Organization received a further and proper appeal response dated July 3, 1990 from the Manager, Labor Relations. The Board here follows the reasoning of Special Board of Adjustment No. 1016, Award 77, also involving the same parties.

The merits issue concerns the assignment of certain work at the new Fisher Road Distribution Center to employees represented by TCU rather than to Maintenance of Way employees. (Some work at Fisher Road is assigned to a limited number of Maintenance of Way employees.) The Board fully reviewed Award 46 of Public Law Board No. 3781, involving the same parties. Although that Award also covers other matters, it addresses the identical circumstances here under review and concludes there was no Rule violation by the Carrier. Public Law Board No. 3781, Award 46 states that its "... ruling shall not be a precedent in any other dispute except where the circumstances are the same as the particular circumstances of this case." The Board in fact perceives that the circumstances are the same and finds no reason not to follow the reasoning in the previous Award and to make it controlling in this instance. The claim will be denied for the period beyond receipt of the Labor Relations Manager's response.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.