

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31048
Docket No. MW-30798
95-3-92-3-601

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

- (1) The ten (10) claims as presented by Boom Truck Operator W. A. Barger on October 19, 1990 to Division Engineer R. J. Rumsey shall be allowed as presented because the claims were not disallowed by Division Engineer R. J. Rumsey in accordance with Rule 26(a) (System Docket MW-2007)."

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.

Rule 26(a) states:

"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 Organization asserts that the ten claims involved in this dispute were presented to the Division Engineer by certified mail and were not responded to in a timely fashion as required by Rule 26(a). Thus, the Organization asserts that the claims must be allowed as presented.

The Division Engineer asserts that the claims were never submitted to him and were not included with other matters in the certified envelope. According to the Carrier, when the claims were eventually received, they were untimely filed.

The record is in irreconcilable conflict concerning the submission of the claims to the Division Engineer, particularly with respect to what was in the envelope. Given that the burden rests with the Organization, that conflict requires a conclusion that the Organization's burden has not been met.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.