

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31207  
Docket No. MW-31503  
95-3-93-3-517

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks 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 claim as presented by Vice Chairman C.T. Burkindine on December 31, 1991 to Division Engineer T.C. Tierney shall be allowed as presented because said claim was not disallowed by Division Engineer Tierney in accordance with Rule 26 (System Docket MW-2612)."

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.

The merits of this dispute is not before this Board for adjudication. If the Carrier did comply with the Time Limits on Claim Rule, then the dispute will be denied, if it didn't, it will be sustained, but solely on the basis of the alleged procedural mishandling.

On December 31, 1991, the Organization drafted a Claim in behalf of Claimant contending that because Carrier was late in posting assignment notices and that the clerk responsible for seniority displacements was unable to advise Claimant of where and whom he could displace. Claimant went on furlough while a junior employee continued working. The Claim was filed on January 6, 1992, but, allegedly, it was never answered.

Based upon the procedural argument, the Claim was appealed. On first appeal, the Carrier denied a procedural error occurred, and furnished a copy of a letter as evidence that the Claim was timely denied. A subsequent and final appeal established nothing new other than the Organization contending the denial letter was for a different Claim than the one this Board is now confronting.

A review of the declination furnished as evidence persuades this Board that the Organization's position is correct, and this is so from two aspects:

- 1 - Furnishing a copy of the alleged denial is not, of and by itself, evidence that said denial was prepared and mailed as of the date of the denial and
- 2 - the denial letter furnished by the Carrier as evidence of a timely response clearly is for a matter other than here in contention.

Based solely from procedural grounds, the claim is sustained as presented in the first instance.

AWARD

Claim sustained.

ORDER

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 1st day of November 1995.