

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31216
Docket No. MW-31721
95-3-93-3-763

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 Employees
(Consolidated Rail Corporation

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

- (1) The claim as presented by Vice Chairman H. Wise, Jr. on March 16, 1992 to Division Engineer T.C. Tierney shall be allowed as presented because said claim was not disallowed by Division Engineer T.C. Tierney in accordance with Rule 26(a) (System Docket MW-2728).

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 Carrier bulletined a number of Orgothern Welder positions, setting forth as a condition precedent, a Class B license requirement.

This Class B license is good for vehicles exceeding 26,000 lbs. This was a new requirement as previously, the trucks used were less than 26,000 lbs. but Carrier had acquired new trucks which exceeded 26,000 lbs.

A grievance was filed requesting that Carrier remove the Class B requirement contending the existing trucks weighed less than 26,000 lbs. The Carrier Officer authorized to receive claims and/or grievances responded timely that the license requirement was mandated by state law, but not to the Representative who filed the grievance in the first instance.

The grievance was not responded to as provided for in Rule 26(a).

What would ordinarily follow is that the claim must be "allowed as presented", however, in this instance we have a grievance that wasn't responded to and the grievance sought injunctive relief, a settlement that is beyond the authority of this Board.

Though carrier, in this instance, did not meet the requirements of Rule 26(a), the grievance must necessarily be dismissed because of the inappropriateness of the sole remedy sought. See Award 94 of Public Law Board No. 2512.

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 November 1995.