

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31508
Docket No. MW-32117
96-3-94-3-519

The Third Division consisted of the regular members and in addition Referee Robert Richter 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 claim as presented by General Chairman L. W. Borden on April 12, 1993 to Director **M** of W Equipment and Shops F. Gschwandegger shall be allowed as presented because said claim was not disallowed by Director **M** of W Equipment and Shops F. Gschwandegger in accordance with Rule **12.2(a)** (Carrier's File 930459) **MPR**."

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.

On April 12, 1993, the Organization filed a claim with the Carrier's Director of **M** of W Equipment and Shops because work was being assigned to employees from a seniority district different than the Claimants. The April 12, 1993 letter reads as follows:

"Time is being claimed on behalf of System Work Equipment Mechanics I. W. Jones, SSN 491-60-0886, T. E. Eaton, SSN 553-66-9106 and E. L. Hardiman, SSN 429-84-3486 for all time worked by Katy Mechanics working with System Rail Gangs **#9101** and **#9109** beginning February 15, 1993, and continuing.

Carrier has three (3) IAM Katy Mechanics John Ferguson, **Kevin Curtis** and Jim Livingston working alongside the System Mechanics with System Rail Gangs **#9101** and **#9109**. In February they were working near Big Spring, Texas, in March near Gurdon, Arkansas and presently in the vicinity of Utica, Kansas. These employees do not hold seniority on this property and should not be allowed to work with this gang. They are still being paid wages and expenses from their assigned territory and under the Katy agreement.

This is a definite loss of work opportunity for System Mechanics. These jobs should be bulletined so that the proper employees could be assigned. If Carrier lacks mechanics to fill these positions, promotions should be made.

We contend that rules of our agreements have been violated, especially Rules 1, 2, 10 and 11 of our current working agreement.

Please advise if you will allow this claim."

On July 15, 1993, the General Chairman wrote the Carrier pointing out that the April 12 letter was not answered thereby violating Rule 12 of the Agreement. Rule 12 reads as follows:

"Rule 12. Section 2. (a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to the other similar claims or grievances. "

On July 27, 1993, the Carrier responded to the initial claim, denying same.

The Organization argues that the claim should be allowed as presented because of the violation of Rule 12.

The Carrier argues that the original claim was not filed in a timely manner because the work had been assigned prior to February 15, 1993.

While the Carrier's position may be correct, Rule 12 requires that its position must be taken within 60 days from the filing of the claim. Failing to do so makes the claim payable as presented: however, without precedent. The Agreement was violated.

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 23rd day of May 1996.