Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 34196
Docket No. MW-32516
00-3-95-3-417

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 Employes
(
(CSX Transportation, Inc. (former Western Maryland
(Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned outside forces (A & K Railroad Materials Inc.) to perform track maintenance work (remove track) from Mile Post 95 to Mile Post 99 on the Hanover Subdivision, Baltimore Division beginning November 9 through December 10, 1993, instead of assigning Messers. G. A. Harbaugh, R. L. Smith, H. D. Weslow, J. E. Hall, T. L. Lynch and R. S. Palmer to perform said work (WMR).

(2) The claim referenced in Part (1) above as presented by Local Chairman G. A. Harbaugh on January 8, 1994 to Division Engineer M. D. Ramsey shall be allowed as presented because said claim was not disallowed by him in accordance with Rule 16(a).

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants G. A. Harbaugh, R. L. Smith, H. D. Weslow, J. E. Hall, T. L. Lynch and R. S. Palmer shall each be allowed two hundred forty (240) hours' pay at their respective time and one-half rates."

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 were given due notice of hearing thereon.

By letter dated January 8, 1994 sent by certified mail, the Organization filed a claim on the Claimants' behalf seeking 240 hours pay per employee at the time and one-half rate alleging that the Carrier improperly assigned track removal work to A & K Railroad Materials, Inc. from Mile Post 95 to Mile Post 99 on the Hanover Subdivision, Baltimore Division during the period November 9 through December 10, 1993.

By letter dated November 7, 1994, the Organization listed claims for a conference on November 17, 1994 and further stated "[i]n addition we have a number of claims for which we have no response from the first level claim officer" and that "[t]hese claims are also being appealed to you as a default issue and for discussion at our November 17, 1994 conference." This claim was listed as part of those allegedly unanswered claims.

A claims conference was then held on November 17, 1994.

During the processing of the dispute on the property, the Carrier produced an unsigned letter from the Carrier's Division Engineer dated March 4, 1994, declining the claim stating that a Notice of Intent to contract dated September 24, 1993 was sent to the Organization and further noted that the Claimants were on duty and under pay at the time the claimed work was performed.

Relying upon Rule 16, each side asserted that the other's processing of the claim was untimely. The Carrier also asserted laches as a defense.

The question of whether the Carrier timely responded to various claims discussed at the parties' November 17, 1994 claims conference has been decided favorably to the Organization in three prior Awards between the parties. Third Division Awards 33417, 33452 and 33623. As discussed in detail in Third Division Award 34195 issued this date, those Awards are not palpably in error and, for purpose of stability, must be followed.

Those prior Awards and Third Division Award 34195 therefore govern the questions presented in this case. No matter how the Board with this sitting neutral may feel about the arguments if presented on a de novo basis, under authority of those prior Awards, we have no choice and are compelled to find that the Carrier has not sufficiently demonstrated that it timely responded to the claim. Therefore, under Rule 16.1(a), the claim "shall be allowed as presented."

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 August, 2000.