

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37479
Docket No. MW-36365
05-3-00-3-605**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employe S. Gary to a short vacancy on the Production Gang at Glenwood, Minnesota beginning April 5 through 9, 1999, instead of Mr. R. Ostrum (System File R1.463/8-00219-038).**
- (2) The claim as presented by General Chairman E. N. Ostlund on May 18, 1999 to Production Gang Manager D. E. McCall shall be allowed as presented because said claim was not disallowed by Production Gang Manager McCall in accordance with Rule 21-1(a) and 21-1(b).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant R. Ostrum shall now be ‘ . . . reimbursed for the equivalent of forty (40) hours at the extra gang laborer rate of pay and have all overtime, vacation, fringe benefits, and other rights restored which were lost to him as a result of the above violation.’”**

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.

On May 18, 1999, the Organization filed the instant claim, contending that the Carrier failed to call the Claimant for a short vacancy position during the week of April 5 through April 9, 1999. The Organization subsequently notified the Carrier by letter dated August 2, 1999 that it had not received a response to the claim. It is the Organization's position that the claim must be allowed as presented because the Carrier failed to make a timely disallowance of the claim.

In response, the Carrier argues that the claim filed on the Claimant's behalf was invalid ab initio due to the failure to identify the dates the violation occurred, the junior employee who worked the position, and the amount of the claim involved. The Carrier submits that its failure to timely respond does not act to overcome the Organization's initial failure to state a valid claim.

We are not persuaded by the Carrier's argument. Based on our review, it is clear that the claim contains all the elements of a proper claim and was timely filed. Once that finding is made, the application of Rule 21 dictates the outcome of this case. The Rule states:

"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... in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented. . . ."

The record shows that the Carrier failed to disallow the instant claim within the 60-day time limit. The Carrier advanced several additional arguments in its defense regarding the merits of the claim. However, the Carrier's failure to comply with Rule 21 requires that we sustain the claim as presented without ruling on the merits.

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 19th day of April 2005.