

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21900
Docket Number NW-21704

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Inc.

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

The claims submitted in behalf of Section Foreman E. L. Torske and Sectionmen Gary Swanson, Dennis Eckhardt and C. L. Fletcher covering cost of clothing ruined while unloading ties on January 21, 1974 shall be allowed as presented as required by the last sentence of Agreement Rule 42 A which reads:

'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 Company as to other similar claims or grievances.' (System File 21-3/MW-24 8/5/75)"

OPINION OF BOARD: On March 7, 1974, "claims" and "complaints" were submitted for money to replace clothing which had assertedly been ruined while performing certain of Carrier's pursuits.

The Roadmaster, to whom the claims had been submitted, referred the matter to a Superintendent for handling. That Superintendent failed to respond, and on June 7, 1974, the Claimants requested that the claims be paid because of the failure to reply. Subsequent similar requests were submitted on September 9, 1974 and June 13, 1975.

On July 1, 1975, Carrier made initial reply, stating that Rule 42 A was inapplicable. Rule 42 A:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty (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 Company shall, within sixty (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 Company as to other similar claims or grievances."

Carrier insists that Rule 42 A is not intended to apply to this type of a circumstance, and cites Awards to support its conclusion that it had no obligation to respond to the "claims" and/or "complaints." Further, it states that the Employes failed to cite any rule on the property, which is fatal to its case, and that the claim was untimely and submitted to the wrong person.

Surely, if the matter had been handled on the property in the normal procedural manner, a failure to cite a rule during the entire handling would be fatal, but here, the Carrier did not reply to the first letters, so that a focus was then placed on other matters. In Award 13741, relied upon by Carrier, we find:

"...and Carrier responds that it is not aware of any rule prohibiting the action complained of, the burden shifts to the Organization to particularize the rule(s)." (underscoring supplied)

See, also, this writer's Award 19855:

"It appears rather obvious that when a Carrier specifically advises the Organization that it has failed to identify the rule or rules alleged to have been violated, the Organization is obligated to advise the Carrier of the rule under which it seeks redress." (underscoring supplied)

Thus, the assertion - under this record - that a rule was not cited does not constitute a total defense.

It may very well be that the Employees were dilatory in their assertions and that they addressed them to the wrong official. Similarly, we concur with the Carrier's assertion that Employees could submit obviously frivolous claims. But, we are inclined to determine that the Carrier can protect itself from such circumstances by the simple expedient of responding to the claim and setting forth its defenses therein. Were we to rule to the contrary, we would allow the Carrier to make the determination as to what is or is not a claim which is worthy of presentation here, and in essence, we would permit the Carrier to usurp the function of this Board. In order to protect against such a result, we are inclined to reaffirm this Board's determinations in Awards 16564, 19422 and 20900, among others.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.