

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22710
Docket Number MW-22620

John J. Mangan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

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

The claims* as presented by the General Chairman in four
(4) letters dated March 31, 1977 to Mr. R. T. Pearson, Assistant
Division Manager, Maintenance of Way, shall be allowed as presented
because said claims were not disallowed by said Assistant Division
Manager in accordance with Agreement Rule 47 1(a). (Carrier's Files
D-2013; D-2014; D-2015; D-2016 -- General Chairman's Files C-28; C-27;
C-30; C-29)

*The letters of claim presentation will be reproduced within
our initial submission."

OPINION OF BOARD: This claim involves the alleged violation of
Rule 47-1 (a) which reads:

- "1. All claims or grievances arising on or after January 1,
1955 shall be handled as follows:
- (a) All claims or grievances must be presented in writing
by or on behalf of the employee 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
employee 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 other similar claims or grievances."

The Carrier, pursuant to Rule 47-1 (a), informed the Organization by letter, dated September 24, 1976, that claims should be filed with the Assistant Division Manager.

The four claims in this matter were filed with Assistant Manager, R. T. Pearson, by letter, dated March 31, 1977.

Mr. F. A. Barton, the Division Manager, responded to the claims instead of Mr. Pearson, the Assistant Division Manager. The Organization asserts that the authorized officer failed to respond to the claims as required by Rule 47-1 (a), therefore, the claims should be allowed as presented.

In its submission to this Board, the Carrier does not deny that the Assistant Division Manager did not respond to the claims submitted, but contends that the response of the Division Manager is sufficient for compliance with Rule 47-1 (a).

The Carrier argues further that these claims were initially invalid because they were not submitted timely.

The Organization asserts that the claims were timely filed and the sole question involved in these cases is strictly a procedural one and the merits of the claims should not be considered.

A dispute similar to this one was adjudicated by this Division some fifteen years ago. In that Award #11374, the authorized officer was a chief carpenter - the response to the claim was made by Carrier's Division Engineer and the Division then held:

"Petitioner has the right to rely upon Carrier's freely made designations of Carrier's representatives authorized to process claims from inception through appeals on the property. Consequently, any decision, relative to the claim, communicated to Petitioner by the Division Engineer, is not material."

Other Awards that have followed the same principle are Nos. 4529, 16508, 17696, 18002, 21297, 19946, 21889 and 9760.

We have reviewed the authority submitted by the parties. The great weight of authority supports the position of the Organization that the Carrier committed a procedural error when an official other than the one designated to receive and process the claims responded to the claims.

We agree with the Organization that the Carrier violated Rule 47-1 (a) when it permitted Division Manager F. A. Barton to decline the claims rather than the Assistant Division Manager R. T. Pearson to whom the claims were presented. Therefore, we will sustain the claims. Nor do the provisions of the rule contemplate, when it is applicable, that the merits of the claims shall be considered, consequently, we shall not do so.

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

The Carrier violated the Agreement

A W A R D

The claims are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.