

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23118
Docket Number MW-22466

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The claim* as presented by the General Chairman on March 25, 1977 to Division Engineer J. L. Ozment shall be allowed as presented because said claim was not disallowed by Superintendent J. A. Greener in accordance with Rule 29(a) [System File D-7-77/MW-17-77].

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

OPINION OF BOARD: This claim was filed after the time limits had run; however, Carrier answered the claim and did not raise the defense of lack of timeliness. The Board holds Carrier waived its right to raise that defense.

After the initial answer and appeal, Carrier then failed to answer the appeal within sixty (60) days. As provided by the rules, Carrier's failure to answer requires that the claim must be allowed as presented. Carrier contests that point by asserting that the claim was always bad, due to the untimely filing. Carrier's waiver of the time limits prevents it from relying on that defense.

Under NDC Decision 16 the liability resulting from Carrier's failure to deny the claim in a timely manner runs only to September 2, 1977, the date on which it answered.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.

