

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23125
Docket Number MW-22975

James F. Searce, 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:

(1) The claim* as presented by the General Chairman on October 6, 1977 to Assistant Division Manager R. P. Peacock shall be allowed as presented because said claim was not disallowed by Assistant Division Manager R. P. Peacock in accordance with Rule 47(a) (System File C#107/D-2077).

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

OPINION OF BOARD: The issue before this Board is procedural in nature and predicates upon the following circumstances:

1. By date of October 6, 1977, a claim was issued by the Organization protesting work by employees assigned to one seniority district in another district. The claim set forth the purportedly offended employees, the dates such work was performed and the classifications, numbers and hours purportedly worked by employees of the other seniority district. The claim did not set out who such employees were or when or what work was performed, other than to assert such work would have been accomplished by the incumbent employees, had it not been improperly assigned. The letter was addressed to the Assistant Division Manager - Maintenance of the Wisconsin Division (Peacock).

2. By letter dated January 11, 1978, to the Assistant Vice President of Labor Relations of the Carrier (Merritt) the Organization raised a claim of default based on the non-response of Peacock to its October 6, 1977 letter demanding compensation under the original claim.

3. Via letter of March 13, 1978, to the Organization Merritt indicated that a lack of detail in the original claim precluded the ability of the Carrier to respond and that it would address this matter once more data was in hand.

4. Subsequent correspondence and meetings resulted in a determination that the disputed work was on the Minnesota-Dakota Division and not on the Wisconsin Division.

According to the Carrier, the Claim is without substance because it is in error ab initio in keeping with the proper interpretation of Rule 47, Time Limit-Claims or Grievances, 1(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 points specifically to the requirement of the Organization to submit a claim "...to the officer of the Carrier authorized to receive same ...". The Organization raises the same Rule to support the Claim, citing the provision that requires a response "...within 60 days from the date same is filed." Essentially, the Organization asserts here that the Carrier does not escape its response time limits merely because the claim might not have been directed precisely to a particular Carrier officer, that it had the obligation to respond, in any case, indicating that the claim was not properly addressed - doing so within its 60 day time limit.

We find the record supports the Carrier's position here. While the Organization's arguments have a degree of appeal, they fail on the grounds that the original claim was devoid of even enough detail for the Carrier to determine how to respond to the Organization. An initial obligation issues to the Organization to set forth the "who, when, where and how" of a claim; not doing so lays impotent contentions of failure by the Carrier to follow-up on such flawed claim. The principle of error ab initio is properly cited here; the Organization's complaint of the Carrier's failure to respond timely is without merit since the original basis for the claim is not properly grounded.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

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