

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23372  
Docket Number CL-23114

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employes  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8867) that:

1. Carrier violated the agreement between the parties, Rule 38 in particular, when they failed to deny the letter of appeal dated July 20, 1978 within sixty (60) days.
2. The claim of C. E. Pavey for May 20, 21, 27, 28, June 3 and 4, 1978, R. M. Bowman for June 1, 2, 8, 9, 15 and 16, 1978 and R. V. Dozier for May 16, 22, 23, 29, 30, June 5 and 6, 1978, shall now be allowed as presented.

OPINION OF BOARD: This dispute concerns an allegation that the Carrier violated Rule 38 of the applicable agreement, in that the Carrier allegedly failed to disallow certain claims within the sixty (60) days provided for in the agreement, and accordingly, the claims must be allowed as presented. In support of its stated conclusion, the Employes assert that the claims were appealed to Superintendent, Hillman on July 20, 1978, but were not denied by him until October 9, 1978 (81 days later).

The Carrier has raised a question as to the particular merits of the claims - asserting that they are merely duplicates of other claims which were denied in a timely manner - and Carrier has also raised certain questions concerning the "questionable" manner in which the claims were received in the Superintendent's office.

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The Board is not at liberty to determine that the failure to apply the time limit contentions may be ignored because of duplication of claims or that the claims were "obviously invalid". Such an argument presumes the very question which is normally presented to a tribunal such as this, and to permit a Carrier to make the determinations as to the validity or invalidity of a claim as it relates to the application of time limits, in essence, deprives this Board of performing its jurisdictional duties.

Concerning the assertion of the "questionable" manner in which the claims reached the Superintendent's office, a question of fact has been raised and a resolution of that fact dispute dictates the outcome of the case because, obviously, a Carrier need not reply to an appeal which was never submitted. In this regard, we note the assertion that the Chief Train Dispatcher

never received his copy of the appeal or the rejection of his prior denial, and that the circumstances surrounding the receipt in the Superintendent's office is suspect to the Carrier.

We must recognize, of course, that there was a period of labor unrest at the particular time in question, so that the normal procedures may not necessarily have been followed by both sides.

In the final analysis, we feel it is incumbent upon the Carrier to rebut the presumption that the appeal was filed and while it may, indeed, be difficult to establish accurate factual conclusions in areas of presumptions and rebuttals to presumptions, we are of the view that the time limits were not complied with and that Third Division Award 20520 controls the outcome of this dispute.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulson*

Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1981.

