

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25089
Docket Number MW-24337

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Missouri Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed and refused to allow Mr. Jimmy Flores, Jr. pay at the track foreman's rate for the work he performed beginning August 6, 1979 (Carrier's File S 310-320).

(2) The claim as presented by General Chairman Hawkes on October 3, 1979 to Superintendent L. L. Carmichael shall be allowed as presented because said claim was not disallowed by Superintendent L. L. Carmichael in accordance with Rule 12, Section 2(a).

(3) As a consequence of either or both (1) and/or (2) above

'Difference in rate of pay between track foreman's rate and assistant foreman's rate of pay is being claimed by and in behalf of Jimmy Flores, Jr., SSN 461-84-5319, for all hours he works beginning August 6, 1979, and continuing so long as Mr. Flores performs foreman's duties on Track Gang 5688 without a foreman assigned thereto.'"

OPINION OF BOARD: Claimant J. Flores, Jr., a Trackman in Carrier's employ at Fort Worth, Texas, was assigned as an Assistant Foreman on June 13, 1979. It was a newly established position that was bulletined on April 20, 1979. At that time, the General Chairman protested that the position should be a Foreman's position, not an Assistant Foreman's. On October 3, 1979, a claim was filed on behalf of J. Flores, Jr., requesting that he be paid the difference between the Assistant Foreman's pay that he was receiving and Foreman's pay, which he should receive from August 6, 1979, for all hours worked for as long as he continued to perform Foreman's duties.

Petitioner presents this instant claim on a time limit basis. It contends that the claim was filed on October 3, 1979, and was not denied by Carrier within the 60-days required by Rule 12 Section 2(a) of the Agreement. As such, it should be paid as submitted.

Carrier contends that the claim was not filed within 60 days of the event that triggered the claim, as is also required by Rule 12 Section 2(a), and that as such, the claim was untimely filed and should be dismissed.

This Board has reviewed the claim and counterclaims submitted on the record of this case, just as it has reviewed the awards submitted for consideration. Based on this review, it is the opinion of this Board that Carrier should have declined the October 3, 1979, claim, stating that it was untimely filed or that it had no merit within the 60-day period specified in Rule 12 (2)(a). Its failure to do so constitutes default and this Board is required to sustain the claim.

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

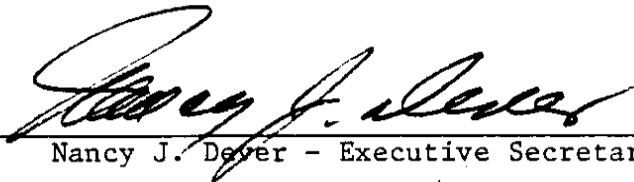
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.