

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25119
Docket Number MW-25062

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Escanaba and Lake Superior Railroad Company

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

(1) The Carrier violated the Agreement when it refused to permit Trackman R. Woods to displace a junior trackman (J. Vermulen) on April 21, 1981 (System File ELS-2060).

(2) The claim as presented by Assistant General Chairman F. M. Larson on June 5, 1981 to Director Field Operations W. F. Drusch shall be allowed as presented because said claim was not disallowed by Director Field Operations W. F. Drusch in accordance with Rule 52(a).

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

"be allowed pay for all time worked by junior employe Jeff Vermulen, claim to continue until Mr. Woods is allowed to return to service or as long as this violation of the January 1, 1975 Agreement continues."

OPINION OF BOARD: At the time this dispute arose, Claimant, R. Woods, was employed by Carrier as a Trackman. He was assigned to the section gang headquartered at Channing, Michigan. On April 16, 1981, Carrier elected to reduce track forces. In so doing, it furloughed Claimant and retained a junior Trackman, J. Vermulen.

As a result of Carrier's action, the Organization filed the instant claim on June 5, 1981. According to the Organization, Carrier had not responded to the claim by August 6, 1981. On that day and continuing until September 22, 1982, the Organization sent Carrier a number of letters seeking disposition of the claim. Thereafter, the Organization appealed the matter to this Board.

The Organization contends that Carrier failed to timely respond to its initial claim. It points out that Rule 52 requires that denials of claims be issued within sixty days of their filing, or the claim will be allowed as presented. Thus, the Organization concludes that the claim should be sustained on this ground alone.

As to the merits, the Organization points out that Rule 9(a) provides that when forces are to be reduced, the most senior employes must be retained. However, the Claimant was furloughed while a junior Trackman remained in service. Therefore, the Organization reasons that Rule 9(a) was violated. Accordingly, it asks that the claim be sustained on its merits as well.

Carrier, on the other hand, argues that the Organization is guilty of laches. It notes that the claim was not appealed to this Board until almost two years after it was initially submitted. In Carrier's view, the delay in processing the claim violates the Railway Labor Act's requirement that disputes be adjudicated promptly. Therefore, it asks that the claim be rejected for procedural reasons.

On the merits, Carrier asserts that Claimant was not qualified to perform the work at issue. As such, Carrier maintains that it did not violate Rule 9(a) when it retained the junior Trackman. Thus, Carrier asks that the claim be rejected in its entirety.

A review of the record evidence convinces us that the claim must be sustained. It clearly reveals that Carrier did not timely respond to the Organization's claim on June 5, 1981. Rule 52 provides that claims must be disallowed within sixty days from their filing. Since Carrier failed to deny the claim on a timely basis, it must succeed.

A question of termination of the claim can be resolved by review of Carrier's records.

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

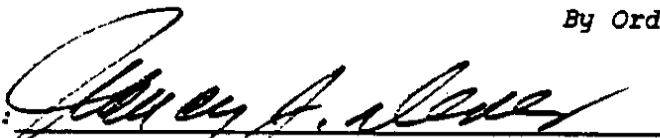
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.