

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25166
Docket Number MW-25089

Martin F. Scheinman, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 laid off Messrs. M. J. Berandt and T. B. Chudy on December 19, 1980 without benefit of five (5) days' advance notice [System File ELS-1746].

(2) President John Larkin failed to disallow the claim (appealed to him under date of June 30, 1981) as contractually stipulated within Rule 52(a).

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

"each be allowed pay at their respective straight time rate of pay for forty (40) hours account five day notice not afforded these employes when their positions were abolished on December 19, 1980".

OPINION OF BOARD: At the time this dispute arose, Claimants T. B. Chudy and M. J. Berandt held seniority as Trackmen in the Track Sub-Department. On December 19, 1980, Carrier notified Claimants that they were laid off effective 5:00 p.m. that date. On March 6, 1981, the Organization filed this claim. It was denied by W. F. Drusch, Carrier's Director of Field Operations on May 1, 1981. The Organization appealed Carrier's denial on June 30, 1981. According to the Organization, Carrier failed to respond to this appeal. Thereafter, on June 22, 1982, the Organization notified Carrier, via certified letter, of its intent to seek a conference on the matter. Subsequently, the claim was appealed to this Board for adjudication.

The Organization contends that Carrier failed to timely respond to its appeal of Carrier's denial of the claim. In its view, such failure violates Rule 52(a) which requires that claims or appeals must be denied within sixty days of their claim.

As to the merits, the Organization argues that Carrier failed to give Claimants five days advance notice of their lay off, as required by Rule 9(b). Thus, the Organization concludes that the claim should be sustained on its merits, as well as on procedural grounds.

Carrier, on the other hand, asserts that the claim was not timely filed. It points out that the Claimants were laid off on December 19, 1980. The claim was not filed until March 6, 1981, more than sixty days later. Rule 52 requires that claims be submitted within sixty days of the acts complained of. Thus, Carrier concludes that the claim was untimely filed.

In addition, Carrier points out that the Organization did not process the claim to this Board until approximately two years after it was initially submitted. Therefore, Carrier suggests, the Organization is guilty of laches in the handling of this claim.

On the merits, Carrier asserts that the Claimants were verbally informed more than five days prior to December 19, 1980 that their jobs would be abolished with the first substantial snowfall. Thus, Carrier contends that it complied with Rule 9(b) of the Agreement. Accordingly, it concludes that the claim should be denied in its entirety.

We have carefully reviewed the record evidence. We are convinced that Carrier's contention concerning the failure of the Organization to timely file this claim is a valid one. However, this argument was not raised on the property. It is fundamental that this Board is barred from addressing arguments which have not been raised on the property. The reason for this rule is legion - to encourage parties to resolve their differences at the lowest possible level.

Accordingly, since Carrier did not raise the issue on the property, we are compelled to sustain the claim as presented.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record 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

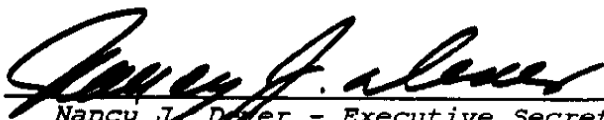
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 30th day of November 1984.