

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25475  
Docket Number MW-25124

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( 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 failed and refused to properly compensate the employees assigned to the Section Gang headquartered at Channing, Michigan for work performed in going to and from their work location and assembly point prior to and continuous with their regular assigned work period on November 2, 3, 4, 5, 6, 9, 10, 12 and 13, 1981 (System File ELST-2808).

(2) The claim as presented by Assistant General Chairman F. M. Larson on December 21, 1981 to Director Field Operations W. F. Drusch shall be allowed as presented because said claim was not disallowed by Mr. W. F. Drusch in accordance with Rule 52(a).

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

"Mr. Jeff Vermulen, Social Security No. 388-52-0206, Mr. James Helgren, Social Security No. 397-74-1308, Mr. Art Burby, Social Security No. Unknown and Mr. Dennis Pepin, Social Security No. Unknown, asking that each be compensated at his respective overtime rate of pay for a total of eleven (11) hours."

OPINION OF BOARD: The relevant facts of this claim are not in dispute. On the dates of November 2, 3, 4, 5, 6, 9, 10, 12 and 13, 1981, Carrier assigned Claimants to perform Section Gang work at Sidnau, Michigan. Claimants had been regularly headquartered at Channing, Michigan.

By letter dated December 21, 1981, the Organization filed this claim. In it the Organization contended that Carrier impermissibly changed Claimants' regular designated assembly point. On February 19, 1982, the Organization wrote another letter to Carrier, insisting that Carrier had failed to timely respond to the initial claim, in violation of Rule 52(a) of the Agreement.

Carrier denied the Organization's claim by letter dated February 21, 1982. Thereafter, on April 25, 1982, the Organization appealed Carrier's denial. On June 15, 1982, Carrier's highest designated officer rejected the Organization's appeal. On March 14, 1983, the Organization appealed the claim to this Board for adjudication.

The Organization contends that Carrier failed to timely respond to its initial submission, in violation of Rule 52(a). It filed the original claim on December 19, 1981. Carrier denied it on February 21, 1982, more than sixty days thereafter. Rule 52(a) requires that claims be denied within sixty days or they will be "allowed as presented". Thus, the Organization concludes that the claim should be sustained on procedural grounds alone.

As to the merits, the Organization asserts that Claimants were required to assemble at Channing, Michigan one hour prior to their regular starting time and one hour after their regular quitting time. As such, the Organization contends, Claimants were clearly entitled to eighteen hours' overtime in accordance with Rules 27 and 33.

Carrier, on the other hand, asserts that it received the claim on December 24, 1981. It denied the claim on February 21, 1982, fifty-nine days later. Thus, Carrier argues that it complied with Rule 52(a).

On the merits, Carrier maintains that it has often verbally notified employees of changes in their regular designated assembly point. Carrier insists that it did so in this case. Accordingly, Carrier urges that it complied with Rules 27 and 33 here. Therefore, it asks that the claim be rejected.

After carefully reviewing the record evidence, we are convinced that the claim must be sustained on procedural grounds. The claim was initiated via letter dated December 21, 1981. Carrier's defense that it was not received until December 24, 1981 was never raised on the property. President J. Larkin rejected the Organization's appeal via letter dated June 15, 1982. That letter makes no reference to the Organization's contention that Carrier had defaulted on the claim. Instead, it simply reiterates Carrier's position that it complied with Rules 27 and 33.

It is axiomatic in railroad labor relations that arguments not raised on the property cannot be considered by this Board. As was noted in Award No. 8484:

"...it is apparent that the Board has diligently protected the parties...in limiting the defenses imposed so that there can be no enlargement - or in lay language, no second look after the case is concluded on the property."

Here, by its letters of February 19, 1982, and April 25, 1982, the Organization specifically argued that Carrier had defaulted on the claim, in violation of Rule 52(a). Carrier never responded to this argument on the property. Thus, it is barred from raising it for the first time before this Board. Accordingly, and for the foregoing reasons, the claim must, in the language of Rule 52(a), be allowed as presented.

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;

Award Number 25475  
Docket Number MW-25124

Page 3

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. Lever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.