

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25643
Docket Number MW-25752

Stanley L. Aiges, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The National Railroad Passenger Corporation
((Amtrak) - Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned Car Department forces instead of Bridge and Building Department forces to remove and replace floor covering in an office at Car Shop #1 at Wilmington, Delaware on February 23, 1982 (System Dockets 430 and 431).

(2) As a consequence of the aforesaid violation, Carpenters R. Goodyear and B. Offschunka shall each be allowed eight (8) hours of pay at their respective straight-time rates.

OPINION OF BOARD: On February 23, 1982, Carrier assigned two Employees, G. Brown and A. Domini, to remove and replace floor covering at its Wilmington, Delaware Car Shops. Each spent eight hours on that work. Claimants R. Goodyear and R. Offschunka are Carpenters within the Bridge and Building Department. They were assigned as such to the Wilmington Car Shops in February 1982. Separate claims were submitted on their behalf. The claims allege Carrier improperly failed to assign them to the work performed by Brown and Domini on February 23, 1982.

On April 7, 1982, Division Engineer M. E. Dunn acknowledged receipt of the claims. In separate letters, he denied each. Claimants' District Chairperson on April 16, 1982, allegedly sent a hand written letter to Dunn advising that the denial was "unsatisfactory" both to the Organization and the Claimants. Carrier contends that the rejection letter was never received by Division Engineer Dunn.

On April 21, 1982, the District Chairperson appealed Division Engineer Dunn's decisions to Assistant Chief Engineer-Structures A. B. Smythe. (Once more, separate letters were sent.) They read:

"The decision of Division Engineer Dunn being unsatisfactory to the Claimant and the Organization, this claim is being progressed to you as per the current and applicable agreement.

"Kindly advise if you will allow this claim and the payroll period that compensation will be paid."

Carbon copies were sent to the files and the Claimants. No copy was forwarded to Division Engineer Dunn.

Further rejections led to the claims being submitted here. (They were consolidated as a matter of convenience without objection.)

Carrier raises a procedural objection to the consideration of these claims. It argues that they are barred from consideration by this Board under Section 3, First (i) of the Railway Labor Act in that they were not progressed in accordance with Rule 64 of the governing Agreement.

Rule 64 concerns Claims for Compensation - Time Limits for Filing. In relevant part, it states:

"(C) If a disallowed claim or grievance is to be appealed, such appeal must be in writing...and the representative of AMTRAK shall be notified in writing...of the rejection of his decision. Failing to comply with the provision, the matter shall be considered closed..."

The Carrier's procedural objection to consideration of this claim must be sustained.

The terms of Rule 64 are clear and unambiguous. They plainly obliged the Organization to give notice "in writing" to Division Engineer Dunn "of the rejection of his decision". It failed to do so.

The April 21, 1982 appeal simply "was not the equivalent of the required notice of rejection to the Carrier's representative who made the decision". Third Division, Award No. 8564.

Rule 64 further specified that if failure to comply with its terms occurs, "the matter shall be considered closed".

We are duty bound to rule the claim was terminated when the Organization failed to adhere to the requirements of Rule 64. Accordingly, the claim must be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

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Docket Number MW-25752

Page 3

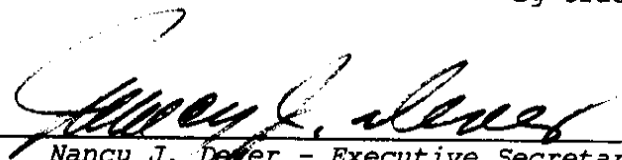
That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1985.