

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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 furloughed Messrs. J. Walling and K. Lykins on or about September 2, 1981 and retained junior employees in service (System File ELST-2548).

2. President John Larkin failed to disallow the claim (appealed to him under date of December 15, 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 for all time worked by the junior employees Latviss and Dishaw, claim to continue until Mr. Walling and Mr. Lykins are allowed to return to service.'"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In this dispute, which involves an asserted seniority violation, the Organization also contends that Carrier violated Rule 52(a), when Carrier failed to respond to the Organization's grievance appeal letter, dated December 15, 1981. In effect the Organization avers that Carrier failed to notify, within sixty (60) days, the General Chairman in writing that said Claim was disallowed.

In reviewing the on-situs appeals record and the detailed thoughtful Submissions covering key substantive and procedural points we must agree with the Organization's position that a procedural violation occurred. This determination is consistent with our decision in Third Division Award No. 25121 and our correlative judicial finding therein that the Claim was properly constituted.

On the other hand, we cannot disregard the rather obvious lengthy hiatus, between the Carrier's failure to disallow the Claim and the Organization's response to this inaction and consequently, compensatory adjustment will attach to the affected period up to March 24, 1983. This was the date the General Chairman notified Carrier of the applicatory pertinence of Rule 52 (a). It would indeed be inappropriate to conclude otherwise, in view of the inexplicable reciprocal delay manifested.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.