Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27852
THIRD DIVISION Docket No. CL-27120
89-3-86-3-198

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Canadian Pacific Limited (Atlantic Region Governing
(Service in the United States on Brownville, Maine
(and Newport, Vermont, Seniority Rosters)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10085) that:

1. Carrier violated Rule 30 of the current agreement when the second level appeals officer of the Carrier failed to timely deny a claim in behalf of J. W. Brigham.

2. Carrier shall now be required to allow the claim in accordance with the provisions of Rule 30, as it was originally presented, as follows:

> 'Claim for two (2) hours pro rata on each of the following dates October 8, 9, 10, 11 and 12, 1984 account not called to cover clerks work, calling crews, and maintaining crew work book at Newport Yard Office.
>
> Claim for eight (8) hours pro rata on each of the following dates October 20 and 27, November 3 and 21, 1984 account transfer of work to another Seniority District and permitting Supervisors to perform, duties of preparing daily and monthly reports which was a duty performed by Claimant Brigham.'"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Claimant submitted claims to the Rail Terminal Supervisor on grounds that he was not called to do Clerks' work on various dates. On November 27, 1984, the Rail Terminal Supervisor denied the claims because "no collective agreement rule (was) quoted ...." On January 2, 1985, this denial was appealed by the Local Chairman jointly to both the CP RAIL Superintendent, Quebec Division and to the CP RAIL Assistant Superintendent.

On January 16, 1985, the Superintendent wrote to the Local Chairman that he was acknowledging "receipt of (the) letter dated January 2, 1985,... and that (the) matter (was) presently being reviewed." On March 28, 1985, this same Superintendent wrote to the Local Chairman again and declined the claims since "there (was) no provision in the collective agreement to support" them. This letter again acknowledged receipt of the January 2, 1985, letter in which the Local Chairman "appeal(ed) the decision rendered on behalf of (the five) claims dated October 8 through 12, 1984." No mention was made of four additional claims for later October dates, nor for two November dates which had been part of the original filing. This letter informed the Local Chairman that proper procedures had not been followed by appealing the claims jointly to both he and the Assistant Superintendent.

On February 15, 1985, the Local Chairman had also been advised by the Assistant Superintendent, to whom the January 2, 1985, letter of appeal had also been addressed, that the claims were denied.

On April 4, 1985, the Local Chairman appealed the Claim again to the Superintendent and requested forfeiture on grounds that the Superintendent's denial was eighty-six days after the first appeal was filed. This appeal stated that the time-limits provisions of the Agreement had been violated.

In a May 24, 1985, letter the General Chairman states that the Superintendent "had been insisting for many months that step 2 (of the appeal process) should be forwarded to the (him and that) this is exactly the procedure followed (by the Local Chairman) although he also addressed the letter jointly to (the Assistant Superintendent) to ensure (that) the proper designated officer of the company received his appeal." This appeal was addressed to the Carrier's General Manager, CP RAIL, Toronto.

The argument by the General Chairman is that Rule 30(a) was to be operationalized, according to the Superintendent, by having appeals at the first step in the process directed to his office. A study of the record fails to produce evidence to refute this argument. First of all, the Superintendent's January 16, 1985, letter states that his office was "reviewing" the claims related to the first five dates in October and the March 28, 1985, letter explicitly denies claims for those dates. A Letter of Agreement, signed by both the General Manager (by a proxy) and the General Chairman of the Organization, under date of March 29, 1985, unambiguously states that Rule 30 means: "Local Chairman to Superintendent," when appeals are handled by the

Organization. This Letter of Agreement states that it was being drawn up "to avoid confusion in future cases...." Although the Carrier argues, in its rebuttal to the Board, that this Letter of Agreement was signed to clarify problems of procedure with another claim which had been filed, the Board finds such argument immaterial. The fact is that the Letter of Agreement outlined a procedure which was precisely the one which the Organization, and the Carrier, used with the instant Claim. If the Carrier's rebuttal arguments before the Board are to be taken at face value they suggest that the Carrier can argue for two different procedures for two different Claims, both of which were being processed approximately concurrently. The safety measure which the Local Chairman used, in the instant case, which appears to have been a reasonable one given the facts of record, was to have sent all appeals to the Superintendent, and also to the Assistant Superintendent. The rationale of the Local Chairman apparently was that the Assistant Superintendent was logically the next level of appeal.

The Board notes, in studying the language of Rule 30(a), that it only states that should a Claim or grievance be disallowed "...the Company", within a designated time period, shall notify the person filing the Claim at first step of appeal. Arbitral precedent dealing with this Rule, or with Rules having comparable language, has been inconsistent with respect to the correct interpretation of general language such as "...the Company" (See Third Division Awards 26328 and 26572). A more recent Third Division Award 27590 reviewed precedent dealing with procedural objections such as the one raised in the instant case and concluded, with Third Division Award 26328 (as well as with PLB 2971, Award 18 which deals with comparable, although not exactly the same Rule language) inter alia that a Rule such as Rule 30 permits a Carrier to deny an appeal by one officer even though it was filed with another. The Board has restudied these Awards, as well as others such as older Third Division Awards 4529, 11374, and 16508. None of the facts of any of these cases are exactly on point with those under consideration here. In those cases there is either no evidence to support a prior understanding by the parties on how an appeal should exactly be handled and/or if there is it is found in the language of a Rule itself (See Third Division Award 16508). In the instant case, the language of a Rule is supported by a mutual understanding of practice which is supported by substantial evidence presented by the Organization. That evidence shows who the appeal was to be directed to, in first instance, and it shows that this Officer acknowledged, by his actions of denial of that appeal, that he was indeed the officer who was to receive and deny such. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U. S. 197, 229). By not denying the appeal in sixty days, this officer was in violation of the time-limits of this provision with respect to Claims for the first five dates in question in October, 1984. By not responding at all to the appeal for Claims for the other four dates in October and November, the Carrier was likewise in violation of the same provision.

The procedural objection by the Organization is sustained. Since all claimed dates precede the date when the appeal was finally denied, payment of all claimed, monetary losses is the proper remedy.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.