

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company

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

(1) The Agreement was violated when the Carrier assigned B&B Bridge Tenders to perform Track Department work in the vicinity of the Minnesota River Bridge (System File 4(o) 13-2 ICC 29863 IA 060184 App. 4/800-46-B-213).

(2) The claim as presented by General Chairman G. G. Western on May 23, 1985 to Regional Engineer T. M. Parsons shall be allowed as presented because said claim was not disallowed by Regional Engineer T. M. Parsons in accordance with Rule 13-1(a).

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

'Sectionman Robert Wagner, should be reimbursed for the equivalent of five (5) hours pay at the pro rata rate from sixty days retroactive of the date of this claim until such time as this violation is discontinued as per Schedule Rule 13-2, for each week of continuing violation.'

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 employees 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.

On May 23, 1985, the Organization initiated a Claim on behalf of the Claimant claiming that Carrier improperly assigned B&B Bridge Tenders to perform certain Track Department work, including greasing the high rail in a quarter-mile long curve near the Minnesota River Bridge. When no response from the Carrier was forthcoming, the Organization on August 15, 1985, requested that the Claim be allowed as presented as it was not declined by the Carrier within the sixty (60) day time limit pursuant to Rule 13-1(a).

Carrier responded by letter dated September 11, 1985, acknowledging that the Claim would be paid but that the remedy requested by the Organization would be modified to reflect actual time spent by B&B personnel performing the disputed work. The Organization, in turn, replied on October 21, 1985, that it would appeal Carrier's decision because it "...desires to continue progression of the claim for a decision on the merits."

Carrier's correspondence dated March 12, 1986, confirms that a conference was conducted concerning the instant Claim and that both parties reaffirmed their earlier positions. There is also correspondence in the record from the Carrier to the Organization indicating that the Claim had been paid in full and Carrier considered the issue resolved.

The Organization now asserts that in progressing this Claim to the Board, it was not the Organization's intention to obtain a pay adjustment without precedent, nor to establish the precedential value of the time limit rules set forth in Rule 13(1)(a). The Organization maintains that the issue it seeks to resolve is whether Carrier improperly assigned the disputed work on the dates in question, and on that point, the Organization contends that the work is clearly encompassed within its seniority groups and sub-departments. Notwithstanding its position that the Claim should be sustained on the merits, the Organization further maintains that Rule 13(1)(a) contractually obligates the Carrier to timely disallow claims, and specifically stipulates that failure to do so results in the claim being allowed as presented. In this case, the Organization argues that Carrier improperly modified the payment to reflect actual time expended by B&B employees greasing the rails. Finally, in its Rebuttal before the Board, the Organization maintains that the Claim was never paid, and therefore, it should now be sustained in its entirety.

Carrier's position is that the Board is not empowered to consider the Claim presented herein on its merits. In Carrier's view, the Board is precluded from such consideration on the grounds that the remedy sought has already been allowed in accordance with Rule 13-1(a) and therefore the Claim is moot. Moreover, Carrier asserts that the Board has no power to grant declaratory relief when a time limit violation has occurred. Finally, the Carrier submits that the record shows that the Claim was paid in accordance with Rule 13-1(a), and that any new argument presented by the Organization cannot be considered.

The Board has carefully considered the arguments presented and reviewed the Awards cited by the parties. Unfortunately, none of the cases referred to by the Carrier or the Organization is factually on point, and there is little that can be gleaned from the principles enumerated therein which would serve as precedent in the instant matter.

As we view this case, the pivotal issue presented is whether the Board has jurisdiction to hear this dispute. On that point, we note that the Organization clearly requested payment to be made for Carrier's violation of Rule 13-1(a) in its letter of August 15, 1985, and Carrier thereafter agreed to issue payment of this Claim as obligated under the Agreement. Rule 13-1(a) states as follows:

"...Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance ... in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

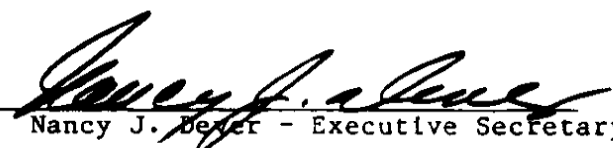
Not until after Carrier agreed to such payment, without prejudice, as Rule 13-1(a) requires, did the Organization then seek to progress this case for a ruling on the merits.

Under these circumstances, we must agree with Carrier's contention that the Board is barred from considering the instant Claim. It is not within the power of the Board to rewrite Agreement Rules but merely to interpret them as they exist. This matter was squarely joined on the property, at which time Carrier recognized a time limit default and resolved the issue in accordance with Rule 13-1(a). We are aware of no Rule or other authority which would empower or require this Board to now issue a precedential ruling on the merits of this dispute. The Organization has attempted to argue that Carrier varied the remedy requested and/or never paid the Claim, but these arguments were never presented on the property and cannot be considered at this level. We rule to dismiss the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.