

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29055
Docket No. MW-28477
91-3-88-3-277

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when it recalled junior Trackmen C. P. Bach and G. DeCourley instead of Trackman P. Pickens to work on the System Rail Gang beginning February 17, 1987 (Carrier's File 870348).

(2) As a consequence of the aforesaid violation, Mr. Pickens' seniority on the System Rail Gang shall be restored and he shall be allowed pay:

'... for eight (8) hours each work day, including any holidays falling therein, beginning February 17, 1987, and continuing so long as junior trackmen work to exclusion of Mr. Pickens.'

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.

A proper resolution of this case requires first a careful analysis of the evidence and argument handled on the property and second, a comparison of that record to the evidence and arguments advanced by the Carrier in its Submission to the Board. Such a comparison reveals that the Carrier's case and defense before the Board is dramatically different than that it presented to the Organization on the property.

In summary, it is the opinion of the Board that the Organization established a prima facie case on the property on two points (one procedural and one substantive), either of which would be a basis to sustain the claim. Further, it is our opinion that the prima facie case was not successfully rebutted on the property. It is so well established so as not to require citation that to be properly considered, evidence and arguments must have been presented on the property.

The procedural case made by the Organization relates to the Assistant Vice President-Engineering's failure to respond to the claim within 60 days. While the response was dated within 60 days on its face, the Organization presented a copy of an envelope with a postmark outside the 60-day limit and a copy of the Carrier's response date stamped as received a few days after the postmark. The Organization asserts that the envelope it presented was the envelope in which the response was sent and argued consequently that the time limits were violated. The Carrier, based on the record we have before us, never responded to the Organization's evidence or arguments.

Additionally, it is noted that the Carrier never successfully rebutted the Organization's assertion that the Claimant had filed his name and address after August 1986, and that the Carrier was in possession of the Claimant's correct address. Moreover, the Carrier failed to support its defense on the property that they had sent a proper recall in November 1986, to which the Claimant failed to respond.

In view of the foregoing, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.