

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 Employes
(
(CSX Transportation, Inc.
(Former Western Maryland Railway Company)

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

(1) The Carrier violated the Agreement when it assigned junior Class 'B' Machine Operator S. Collett instead of Class 'B' Machine Operator R. Roy to operate a Class 'B' spike pulling machine between Elkins and Parsons, West Virginia on January 6, 7, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, February 2, 3, 4 and 5, 1987 (System File 12-18/87-538).

(2) The claim* as presented by District Chairman H. Householder on February 15, 1987 to Division Engineer C. L. Bailik shall be allowed as presented because said claim was not timely disallowed by Division Engineer Bailik in accordance with Rule 16.1. (a).

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Class 'B' Machine Operator R. Roy shall be allowed:

'... 17 regular 8 hour days @ Class "B" Operator
rate of \$12.7994 per hour plus 2 hours at time and
a half (2/20/87) @ \$19.1991 = \$1779.10.'

*The letter of claim will be reproduced within
our initial submission."

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.

Claimant holds seniority as a Class "B" Machine Operator and was on furlough status at the time of the events giving rise to this dispute. On the claim dates, Carrier needed an employee to fill a temporary position operating a spike puller, a Class "B" machine, between Elkins and Parsons, West Virginia. A Trackman, junior to the Claimant as a Class "B" operator, was temporarily upgraded to operate the spike puller, for which he was paid a higher rate of pay.

On February 15, 1987, the District Chairman submitted the instant claim, alleging that Claimant should have been called and used on the Class "B" operator vacancy, and citing Rule 18(a) in support thereof. The claim letter was sent by certified mail to Division Engineer C. L. Bailik, who the Organization contends was the Carrier Officer authorized to receive same. The certified mail return receipt request was received and signed for by E. H. Messner on February 20, 1987.

On April 24, 1987, Division Engineer C. L. Hardy denied the claim. The Organization appealed the claim by letter dated June 8, 1987, contending that it was payable as presented because the Division Engineer failed to make a timely response to the initial claim and further contending that the claim was valid on its merits. By letter dated August 6, 1987, Carrier's Director of Labor Relations declined the claim on its merits and then stated:

"Insofar as the time limits are concerned, while it is true that the claim was received in the Division Manager's office in Pittsburgh and signed for by Mr. Messner on February 20, 1987, it was not received by the Division Engineer, the officer designated to receive claims, until February 23, 1987. It is our position that the claim was improperly filed; however, we are willing to waive the time limits because of these circumstances."

The Organization contends that the Carrier violated the time limits set forth in Rule 16(a), which provides:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. 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 (the employee or his representative) 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."

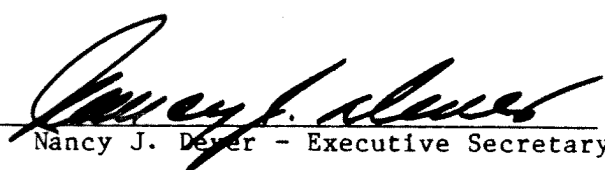
Carrier contended on the property that the claim was improperly filed and that it was not received by the Division Engineer, the officer designated to receive claims, until February 23, 1987. In its Submission before the Board, Carrier argued for the first time that the Division Engineer in Baltimore was the only authorized Carrier Officer to receive claims, and that, since the Organization had been properly notified of that fact, the original claim was sent in error to the Division Engineer in Pittsburgh, Pennsylvania. We are precluded from considering this information, however, as it was not raised during the handling of this dispute on the property. Given the state of the record actually before us, we are compelled to conclude that Carrier's general assertions on the property cannot serve to defeat the Organization's claim. The evidence shows the claim was filed on February 20, 1987, when a Carrier agent acknowledged receipt thereof. The Organization asserted that the claim was properly addressed and presented to the officer, Division Engineer C. L. Bailik, authorized by the Carrier to receive claims. If the Organization was in error, Carrier was obligated to demonstrate that fact with probative evidence on the property. Instead, the record shows that the claim was disallowed by Division Engineer Hardy on April 24, 1987, beyond the 60-day time limit. The claim must be allowed as presented.

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 3rd day of April 1992.