

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29545
Docket No. MW-29909
93-3-91-3-293

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

(Brotherhood of Maintenance
(of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier abolished two (2) vehicle operator positions headquartered at Bethlehem, Pennsylvania effective August 1, 1990 and subsequently assigned employees other than vehicle operators to operate the vehicles at Bethlehem (log loader and three-way dump truck) on a regular basis beginning December 4, 1989 (System Docket MW-1128).

(2) The claim* as presented to Division Engineer J. R. Beard on January 29, 1990 by District Chairman H. Wise shall be allowed as presented because said claim was not timely disallowed by Manager Labor Relations F. J. Doyle (appealed to him on March 30, 1990) in accordance with Rule 26(b).

(3) As a consequence of the violations in Parts (1) and/or (2) above, furloughed Vehicle Operator B. L. Stefano shall be allowed eight (8) hours of pay at the vehicle operator's straight time rate for each day, "Monday through Friday, beginning December 4, 1989 and continuing until the violation is corrected.

* The initial 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 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.

This dispute involves the Carrier's use of employee headquartered at the Bethlehem Engine Terminal to operate a Dump Truck and Log Loader Truck, beginning on December 4, 1989. The Organization filed the instant claim on January 29, 1990. After a timely denial by the Carrier, the Organization appealed the claim on March 30, 1990. The Carrier denied the claim on June 12, 1990, 62 days after the appeal.

Rule 26 of the Agreement reads in pertinent part as follows:

"(b) A claim or grievance denied in accordance with paragraph (a) shall be considered closed unless it is listed for discussion with the Manager-Labor Relations by the employee or his union representative within sixty (60) days after the date it was denied. A claim or grievance listed ten (10) days prior to the date of a scheduled meeting with the local committee will be placed on the docket for discussion at such meeting. When a claim or grievance is not allowed, the Manager-Labor Relations will so notify, in writing, whoever listed the claim or grievance (employee or his union representative) within sixty (60) days after the date the claim or grievance was discussed of the reason therefor. When not so notified, the claim will be allowed."

While the Carrier argues that its liability should be limited to only a portion of the claim period, we find that Rule 26 is self-executing and that the claim must be sustained as presented, with the Carrier's liability ending on the date of its denial letter. As was stated in Third Division Award 27640:

"The Carrier further argues, however, that the Claim for compensation is improper since "this Board has no authority to award any 'penalty pay' to the Claimants." But for the requirement of Rule 4-K-1(a), the Board well might have been in a position to consider whether the Claim seeks 'penalty pay' for readily implied admission of violation of Rule 5-E-2 or whether the remedy sought is proper compensation for alleged inconvenience."

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However, the Board is clearly precluded from reviewing this aspect of the dispute.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.