

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30596
Docket No. MW-29887
94-3-91-3-252

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

(1) The Carrier violated the Agreement when on March 6, 1990, it awarded the assistant foreman flagging position advertised on Bulletin B-1099 to junior employe M.E. Bryars instead of Mr. P.M. Wood in recognition of his seniority [System File 14(1)(90)/12(90-534) LNR].

(2) The claim* as presented by the General Chairman on March 19, 1990 to Division Engineer A.E. Mooney will be allowed as presented because Mr. A.E. Mooney failed to timely respond and give reasons in writing for his disallowance of said claim in accordance with Rule 26.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. P.M. Wood shall:

- (a) be allowed to displace Assistant Foreman M.E. Bryars,
- (b) be allowed the difference between B&B helper's rate of pay and assistant foreman flagging rate of pay,
- (c) receive all overtime paid Mr. M.E. Bryars beginning March 6, 1990 and continuing until he is permitted to displace Mr. Bryars, and
- (d) establish Rank 2 seniority dating from February 22, 1990."

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 dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization initially argues that this claim should be allowed as presented because of Carrier's alleged failure to disallow the General Chairman's initial letter of claim within 60 days of its filing. The Organization points out that this is a violation of Rule 26(a):

"RULE 26. FILING CLAIMS

26(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."

The claim was filed on March 19, 1990. By letter dated May 24, 1990, the General Chairman notified Carrier of its failure to respond in a timely manner. The claim was eventually declined on May 29, 1990.

Carrier acknowledges that the claim was not declined until 71 days after it was filed, but argues that this tardy response "...was not sufficiently grave as to justify the permanent establishment of seniority in a rank that the Claimant has failed to qualify for."

This Board has reviewed the record of the case and concludes that this claim must be granted, based upon this clear violation of the parties' Agreement. The language of Rule 26(a) is unambiguous. In the event of an untimely notification of the disallowance of a claim, the claim must be allowed as presented. The Rule makes no mention of the fact that time limits may be overlooked when Carrier believes that the claim has little merit. This conclusion is consistent with numerous decisions of this Board.

Should Claimant lack the qualifications for the Assistant Foreman flagging position, Carrier has other avenues through which to address that problem. Under the circumstances presented here, however, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.