

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31351
Docket No. MW-30990
96-3-92-3-817

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Monongahela Railway Company)

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

- (1) The eighteen (18) claims* as presented to Supervisor Testa by various claimants or their representative during the period of January through September, 1991 and thereafter, appealed to Director of Labor Relations D.E. Gratz, shall be allowed as presented because the claims were not disallowed by Supervisor Testa and Director of Labor Relations D.E. Gratz in accordance with Rule 4-L-1.

* The initial letters 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.

At the outset, the Organization has raised objection to new argument raised by Carrier for the first time in its submission to the Board. Evidence or arguments offered for the first time at this stage will not be part of the Board's deliberations.

This case concerns application and interpretation of Rule 4 of the Schedule Agreement which reads in pertinent part as follows:

"CLAIMS FOR COMPENSATION - TIME LIMIT FOR FILING

4-L-1. [a] Claims for compensation alleged to be due made by or in behalf of employees must be presented, in writing, to the Supervisor, Master Carpenter, or corresponding officer, within sixty days from the date the employee received his pay check for the period in which the alleged shortage occurs....

* * *

[c] When claims for compensation alleged to be due have been presented in accordance with the foregoing paragraph (a) ... and are not allowed, the employee will be notified to this effect, in writing, within sixty days from the date his claim was presented. When not so notified, claims will be allowed."

Under various dates from January 18, 1991, through September 27, 1991, Claimants presented claims to Supervisor L. C. Testa, the Carrier officer authorized to receive claims at the initial level. On November 17, 1991, the Organization's District Chairman notified Carrier's Director of Labor Relations that the time limits for responding to the claims in accordance with Rule 4 (quoted above) had been exceeded and the claims were payable as presented.

The Carrier's sole defense in this case is that the claims alleged were never properly presented and progressed on the property. It does not dispute that the claims, if properly progressed, were not responded to by the designated Carrier officer within the contractually stipulated time limits.

A careful review of the record before the Board indicates that there is some doubt concerning whether Carrier received all eighteen claims allegedly presented. There can be no doubt, however, that Carrier received the claims sent Certified Mail, Return Receipt Requested, since the accompanying response cards contain the signature of a Carrier employee, confirming receipt of the claims. Thus, the Organization has met its burden of proof for those claims submitted via Certified Mail, Return Receipt Requested. For those claims allegedly submitted by hand, the burden of proof has not been met.

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The Board finds that the Carrier shall pay those claims contained herein which were accompanied by postal verification -- either the Certified Mail receipt or the green Return Receipt Requested post card.

AWARD

Claim sustained in accordance with the Findings.

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 25th day of January 1996.