

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31675  
Docket No. MW-31283  
96-3-93-3-275**

**The Third Division consisted of the regular members and in addition Referee Robert Richter 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 claim \* as presented by Vice Chairman C.T. Burkindine on September 24, 1991 to Division Engineer R.J. Rumsey shall be allowed as presented because the claim was not disallowed by Division Engineer R.G. Rumsey in accordance with Rule 26(a) (System Docket MW-2347)."**

**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.**

**On September 24, 1991 the Vice General Chairman filed a claim with the Carrier's Division Engineer, which was received on September 27, 1991. On December**

30, 1991 the Organization requested the claim be allowed as presented because the Division Engineer had failed to decline the claim within the 60 days as required by Rule 26 of the Agreement. In conference on February 6, 1992 the Carrier gave the Organization a copy of the Division Engineer's declination dated November 20, 1991.

The Organization has appealed this case to the Board solely on the basis of a violation of the Time Limit Rule.

When an alleged violation of the Time Limit Rule is made the party charged with the violation has the burden of proving it properly met its responsibility. In this case the only proof that Carrier has presented that the Division Engineer had timely declined the claim is the following Statement from the Division Engineer:

"To the best of our knowledge, this claim was handled in a timely manner an in accordance with the schedule Agreement."

This Board finds such a statement is inadequate proof and will sustain the claim.

### **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 29th day of August 1996.