

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33479
Docket No. MW-32470
99-3-95-3-378**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The claim as presented by General Chairman M. S. Wimmer under date of March 14, 1994 to Division Manager D. J. Hansen shall be allowed as presented because said claim was not disallowed by Division Manager D. J. Hansen within the required sixty (60) day time limit set forth in Rule 47 (System File C-04-94-C080-01/8-00197 CMP).”

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 were given due notice of hearing thereon.

The instant claim was filed by the General Chairman on March 14, 1994, alleging that Carrier violated the Agreement by contracting out the construction of a building

around the air dryers in the Retarder Yard. The Organization filed the claim with the Division Manager, the officer designated by Carrier to receive such claims. The Division Manager never responded to the claim, but, on May 9, 1994, the Manager Engineering Maintenance responded, denying the claim. The only issue before this Board is whether the failure of the Division Manager to reply to the claim requires that the claim be sustained as presented.

Rule 47(1)(a) provides:

“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.”

There are numerous conflicting awards concerning whether Rule 47 or identically worded rules under other agreements require that the Carrier officer authorized to receive a claim also respond to the claim. The Organization relies primarily on Third Division Awards 11374, 22710, and 23210. These and similar awards were reviewed meticulously in Third Division Award 27590.

In Award 27590, the Board observed that although language in Award 11374 supported the proposition that only the Carrier officer designated to receive a claim may respond to the claim, the actual reason that the claim was sustained was the designated Carrier officer's failure to provide the reasons for the disallowance of the claim. The Board in Award 27590 further observed that Award 22710 relied on Award 11374 in holding that a denial by an officer other than the one authorized to receive claims was of no effect. We observe that Award 23210 similarly merely relied on Award 22710.

Not only did Award 27590 point out the true basis for Award 11374, it also relied on the plain language used in the Rule to conclude that an officer other than the one authorized to receive the claim may properly reply to the claim. The Award observed

that while the Rule specifies that the claim must be filed with “the officer authorized to receive same,” it does not expressly require that officer to respond. Instead, the Rule only requires “the Carrier” to notify whoever filed the claim of the reasons for its disallowance. Award 27590 saw no basis for implying a restriction on which officer could respond for Carrier when no such restriction was written into the express language of the Rule. In Third Division Award 30463, we followed Award 27590.

We agree with the reasoning of Award 27590. Rule 47(1)(a) merely provides that Carrier must provide the reasons for disallowing a claim, within 60 days following the claim’s filing. It does not restrict the reply to any particular Carrier officer. We see no reason to imply such a restriction. Accordingly, we follow Awards 27590 and 30463 and reject the procedural arguments proffered by the Organization.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of September 1999.