

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43459
Docket No. MW-44769
19-3-NRAB-00003-180139

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when the award was rendered.

(Brotherhood of Maintenance of Way Employees Division-
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Escanaba and Lake Superior Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to properly abolish job bulletins beginning on November 10, 2016 and continuing (System File B-1615E-202 ELS).
- (2) The claim* as appealed by General Chairman L. Below on March 24, 2017 to President J. Larkin shall be allowed as presented because it was not disallowed by President Larkin in accordance with Rule 52.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Grailer, G. Willman, B. Linna, J. Gravely, T. Davis, J. Brousseau, W. Hall, J. Berg, B. Parkhurst, D. Homernik, B. Lamson, D. Brazeau and T. Mayo must be compensated ‘*** for an equal share of \$65.00 per calendar day for each day (\$5.00 per claimant; per calendar day) so long as the violation continues commencing from November 10, 2016, (first day following new assignments). Claimants B. Lamson, D. Brazeau, and T. Mayo must be compensated as though they were assigned to the vacant positions that were never abolished based on their respective hourly rate last worked, a basic work day, and basic work week from November 20, 2016 and continuing. Claimants must also be made whole for any additional travel and expense based on the location of the new

assignments vs. the location of the position they could have been reassigned to continuing until such time as the Carrier complies with the agreement and either advertises the positions or abolishes the vacant positions. Claimants must also gain any seniority in which they may have been able to establish had the carrier properly advertised the positions.’ (Emphasis in original).

*The initial letter of claim will be reproduced within our 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 were given due notice of hearing thereon.

The Organization brings this claim solely on the basis that the Carrier violated Rule 52 of the Agreement by failing to issue a timely response to the Organization’s appeal of the claim to the Carrier’s highest designated officer (HDO). Accordingly, the Organization asks that the claim be sustained without regard to the merits. The applicable Rule reads as follows:

“RULE 52. TIME LIMIT ON CLAIMS.

(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 sixty (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 sixty (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.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood however, that the parties may be (sic) agreement in any particular case extend the nine (9) months' period herein referred to."

The Organization asserts it presented the instant claim by letter dated December 6, 2016, and it was denied by the Carrier on January 27, 2017. The Organization appealed the denial on March 24, 2017. Having received no response, the Organization, by letter dated July 27, 2017, informed the Carrier that it was in violation of Rule 52 of the Agreement and that the claim must be allowed as presented.

The unique aspect of this claim is that the original claim was presented by Vice Chairman Brian Rumler to John Larkin, the Carrier's President. After Larkin denied the claim, General Chairman Louis R. Below filed the appeal, again to John Larkin. It is the Organization's position that Larkin should have issued another denial.

While the Time Limit Rule, which is essentially from the August 21, 1954 National Agreement, envisions a multi-step grievance procedure, the Carrier has only one person who handles claims. Larkin is the Highest Designated Officer. Consequently, once he made his decision on the initial claim, Rule 52(c) made the claim ripe for appeal to this Division. It would be an absurd application of the Rule if we were to require Larkin to review his own decision. If that were what the Rule required, there might be no end to the number of appeals the Organization could file with him, thereby obligating the Carrier to continually issue denials within sixty days.

Based upon the particular facts in this case, we cannot find that the Carrier was in violation of Rule 52. On the basis of our review of the record, we further find no merit in the Organization's claim.

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 1st day of March 2019.