

PUBLIC LAW BOARD NO. 5567

AWARD NO. 9  
NMB CASE NO. 9  
UNION CASE NO. N.A.  
COMPANY CASE NO. 880706 MPR

PARTIES TO THE DISPUTE:

Union Pacific Railroad  
(Former Missouri Pacific Railroad Company)

- and -

Brotherhood of Maintenance of Way Employees

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

The Agreement was violated when the Carrier required the employees on System Bridge Gang No. 9300 to deviate from their regular Monday through Thursday (10 hours per day) workweek and instead required them to work "split halves" from July 16 through 28, 1988 (Carrier's file 880706 MPR).

2. The claim as presented by General Chairman Borden on August 30, 1988 to Manager of Program Services J. J. Stoner shall be allowed as presented because said claim was not disallowed by Mr. Stoner in accordance with Rule 12, Section 2(a).
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, System Bridge Gang No. 9300 employees T. J. Ribbing, J. D. Burrow, G. E. Ribbing, J. W. Hayden, P. R. Whiting, V. L. Kerperien and C. L. Weidenbenner shall each be allowed pay for forty (40) hours at their respective time and one-half rates and forty (40) hours at their respective straight time rates."

OPINION OF BOARD:

In Summer of 1988, Carrier "compressed" the Monday - Thursday (ten 10 hour day) work week of System Bridge Gang No. 9300 to a "split-half" arrangement. The compressed or split-half work schedule included working eight (8) straight days in each half of

the month, with the number of hours distributed equally among those days so that an would employee receive no less compensation than if assigned to work forty hour weeks.

By claim letter dated August 30, 1988, sent to Manager Stoner by certified mail, return receipt requested, the BMW protest that Carrier's action had violated Rule 14 (Forty Hour Work Week) and a Memorandum of Agreement effective August 1, 1974.

The return receipt shows that the claim letter was received in Manager Stoner's office on September 2, 1988. It is not disputed on this record that the Superintendent failed entirely to deny that claim or that Carrier did not respond in any way until February 1989. By letter of December 12, 1988, the General Chairman appealed to the Director of Labor Relations, reiterating the merits of the claim but also requesting payment "as presented" due to the Superintendent's undisputed violation of Rule 12, §2(a):

"TIME CLAIMS AND GRIEVANCES":

Rule 12. Section 2. (a) All claims or grievances must be presented in writing by or on behalf of the employe 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 employe 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. (Emphasis added).

By letter of February 9, 1989, Carrier responded with an assertion that the original claim was "vague and indefinite," that the damages claimed were excessive, and denying the claim on its merits. But Carrier made no reference to the Superintendent's

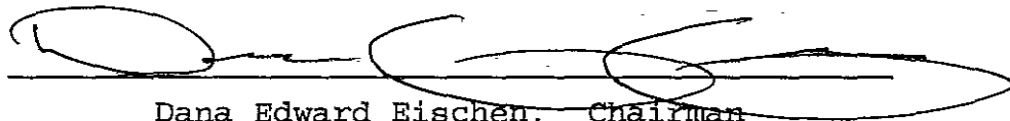
time limit violation.

The defenses raised belatedly by Carrier in February 1989 are more than three (3) months beyond the express sixty (60) day time limits mandated by Rule 12.2.a. Under the clear, unambiguous and self-enforcing language of Rule 12.2.a, the claim must be sustained "as presented" on a nonprecedent, nonprejudicial basis.

See NRAB Awards 3-10199, 3-10500, 3-15006, 3-17085, 3-19946, 3-21755 and Award 7 of Special Board of Adjustment No. 279.

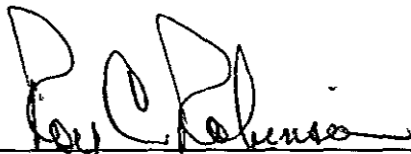
AWARD

- 1) Claim allowed "as presented" under Rule 12.2.a.
- 2) Carrier shall implement this decision within thirty (30) days of its execution by a majority of this Board.



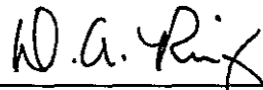
Dana Edward Eischen, Chairman

Dated at Ithaca, New York on September 7, 1994



Union Member

Dated at Chicago, IL  
on September 12, 1994



Company Member

Dated at Omaha, Nebraska  
on September 12, 1994