

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 133

Docket No. 140

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO :
DISPUTE: CHICAGO AND NORTH WESTERN TRANSPORTATION

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

1. The disqualification of Foreman R. J. Martinez was without just and sufficient cause, unduly harsh, capricious and improper (Organization File 4LF-2184; Carrier File 81-87-201).
2. The claim presented by then Vice Chairman L. R. Fenhaus on July 21, 1987, to AVP&DM F.F. Maybee is allowable as presented because said claim was not timely disallowed by Mr. Maybee in accordance with Rule 21.
3. Because of 1 and/or 2 above, Foreman R. J. Martinez shall have Discipline Notice No. 1082 stricken from his record and, commencing June 6, 1987, he shall be compensated for the difference in rates of pay between the Assistant Foreman position he is now occupying and the Track Foreman's position he held at the time of his disqualification."

FINDINGS:

Claimant R. J. Martinez was employed by Carrier as a foreman. On May 13, 1987 the Claimant's gang was observed by Manager of Maintenance Operations in what he considered to be in violation of Carrier's safety rules. Subsequently the Claimant was charged with:

"Your responsibility in performance of your duties as Supervisor by allowing several safety violations to exist with yourself and the men on your gang on Wednesday, May 13, 1987."

An investigation was held on Friday, May 29, 1987, and as a result, Claimant was disqualified as a Foreman. The Organization thereafter filed a claim on Claimant's behalf, challenging his disqualification.

This Board has reviewed the record and testimony in this case and we find that the claim must be sustained on procedural grounds.

Rule 21(a) reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Company 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 Company shall, within sixty (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 Company as to other similar claims or grievances." (Emphasis added).

The rule is clear that the Company has sixty (60) days from the date the claim is filed to notify whoever filed the claim or grievance in writing the reasons for the disallowance of that claim. The rule states specifically that if the filer of the claim is not so notified, the claim or grievance shall be allowed as presented.

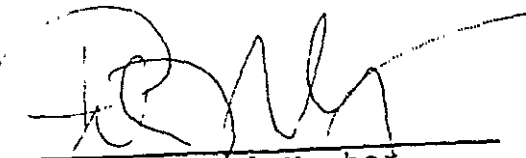
The record in this case reveals that the claim was appealed on July 21, 1987, and that it was received by the Carrier on July 24, 1987, according to statements contained in the letter of the Carrier's Manager of Labor Relations dated July 15, 1988. The Carrier did not mail its response to the Organization until September 23, 1987, according to the postmark. Since 61 days transpired between the receipt of the claim and the Carrier's response, the Carrier did not respond in a timely manner. According to Rule 21(a) the claim must be allowed as presented.

Inasmuch as this claim is being granted on the procedural grounds, it is not necessary to discuss the merits.


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AWARD:

Claim sustained.


Neutral Member


Carrier Member


Organization Member

Date: NOV 28 1989