

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22710
Docket Number m-22620

John J. Mangan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

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

The claims* as presented by the General Chairman in four
(4) letters dated March 31, 1977 to Mr. R. T. Pearson, Assistant
Division Manager, Maintenance of Way, shall be allowed as presented
because said claims were not disallowed by said Assistant Division
Manager in accordance with **Agreement** Rule 47 l(a). (Carrier's Files
D-2013; D-2014; D-2015; D-2016 -- **General** Chairman's **Files C-28; C-27;**
c-30; C-29)

***The** letters of claim presentation will be reproduced within
our initial submission."

OPINION OF BOARD: This claim involves the alleged violation of
Rule 47-1 (a) which reads:

"1. All claims or grievances arising on or after January 1,
1955 shall be handled as follows:

- (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 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 whower filed the claim or griwance (the
employee or his representative) in writing of the
reasons for such disallowance. If not so notified,
the claim or griwance shall be allowed as presented,

"**but** this shall not be considered as a precedent or waiver of the contentious of the Carrier as **to** other similar **claims** or grievances."

The Carrier, pursuant to Rule 47-1 **(a)**, informed the Organization by letter, dated September 24, 1976, that claims should be filed with the Assistant Division Manager.

The four claims in this matter were filed with Assistant **Manager, R. T. Pearson**, by letter, dated March 31, 1977.

Mr. F. A. *Barton*, the Division Manager, responded to the claims instead of Mr. Pearson, the Assistant Division Manager. The Organization asserts that the authorized officer failed to respond to the claims as required by **Rule** 47-1 (a), therefore, the claims should be allowed as presented.

In its submission to this Board, the Carrier does not deny that the Assistant Division Manager did not respond to the claims submitted, but contends that the response of the Division Manager is sufficient for compliance With **Rule** 47-1 (a).

The Carrier argues further that these claims **were initially** invalid because they were not submitted timely.

The Organization asserts that the claims were timely filed and the sole question involved in these cases is strictly a procedural one **and** the merits of the claims should not be considered.

A dispute similar to this one was adjudicated by this Division some fifteen **years ago**. In that Award 811374, the authorized officer was a chief carpenter - the response to the claim was made by Carrier's Division Engineer and the Division then held:

"Petitioner has the right to rely upon Carrier's freely made designations of Carrier's representatives authorized to process claims from inception through appeals on the property. Consequently, any decision, relative to the claim, **communicated** to Petitioner by the Division Engineer, is not material."

Other Awards **that** have followed the same principle are Nos. 4529, 16508, 17696, 18002, 21297, 19946, 21889 and 9760.

We have reviewed the authority submitted by the parties. The great weight of **authority** supports the position of the Organization that the Carrier **committed** a procedural error when an official other than the one designated to receive and process the claims responded to the claim.

We agree with the Organization **that** the Carrier violated Rule 47-1 **(a)** when it permitted Division **Manager** F. A. Barton to decline the claims rather than the Assistant Division **Manager** R. T. Pearson to whom the claim were presented. Therefore, we will sustain the claims. Nor do the **provisions** of the rule contemplate, when it is applicable, that the merits of the claims shall be considered, consequently, we shall not do so.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds **and** holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved **June 21, 1934;**

That this Division of the Adjustment Board **has** jurisdiction over the dispute involved herein; and

The **Carrier** violated the Agreement

A W A R D

The claims are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.