

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29481  
Docket No. MW-28828  
93-3-89-3-225

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance  
(of Way Employes  
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned a junior employe to the track inspector position, advertised in System Bulletin No. 3, on Crew 061 at Enderlin on December 29, 1987 instead of assigning applicant for the position. (System File R549/800-46-B-304)

(2) The Claim as presented by General Chairman G. G. Western on February 16, 1988 to Vice President Engineering Services G. A. Nilsen shall be allowed as presented because it was not disallowed by him in writing sixty (60) days from the date on which it was filed as required by Rule 21.

(3) As a consequence of the violations referred to within either Part 1 and/or Part 2 hereof, the Claimant shall be allowed compensation equal to those allowed junior employee S. T. Nilsen, including all other benefits, in connection with his improper assignment to the track inspector position on Crew 061 beginning on January 5, 1988, and continuing until such time as the Claimant is restored to the position."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant was employed by the Carrier as a track inspector.

The issue is whether the Carrier violated the Agreement when after having assigned the Claimant to fill a track inspector position at Enderlin, North Dakota, it removed and deprived the Claimant from said position and assigned it to S. T. Nilsen, stating that the Claimant was awarded the position in error.

The Organization contends that S. T. Nilsen was not entitled to be assigned to the position in question since he was a new employee by virtue of the forfeiture of seniority which he had formerly held, whereas the Claimant had established and held seniority as a track inspector dating to July 30, 1985; secondly, the Organization contends that the Carrier failed to disallow the initial claim within sixty days from the date the claim was filed.

The Carrier contends that it had a right to correct a bulletin improperly assigned and correctly awarded the position in question to a senior applicant in accordance with the seniority records of date. The Carrier contends that the employee assigned never forfeited his seniority as track inspector and never abandoned the service of the Carrier.

This Board has reviewed the record and we find that the Carrier's response to the Claim was not timely filed. Therefore, the claim must be sustained.

Rule 21 of the parties' Agreement states in part:

"1(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 as filed, notify whoever filed the claim or grievance (the employee or his representative) in writing for 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."

A review of the record in this case reveals that the Organization filed the claim giving rise to this dispute on February 16, 1988. The claim sought a remedy for the Claimant beginning in January 5, 1988, and continuing until such time as the Claimant is restored to the position. The record also reveals that the Carrier did not respond to the claim until April 22, 1988. Since 66 days elapsed between the filing of the Organization's

Form 1  
Page 3

Award No. 29481  
Docket No. MW-28828  
93-3-89-3-225

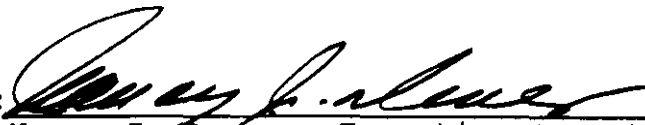
claim and the issuance of the Carrier's response, the claim must be allowed pursuant to the terms of Rule 21.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1993.

CARRIER MEMBERS' DISSENT  
TO  
AWARD 29481, DOCKET MW-28828  
(Referee Meyers)

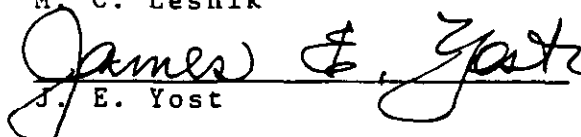
The Majority in this dispute once again, displayed its disdain for precedent and has proceeded to impose its own brand of industrial justice.

The first time limit on claims Agreement was adopted by the parties on August 21, 1954. Subsequent to that Agreement, the parties who wrote it met without an arbitrator and ruled on various questions before it involving the Agreement language as applied to a specific set of facts.

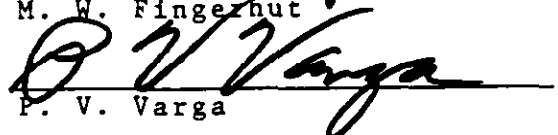
Decision 16 of the National Disputes Committee involved a claim of continuing liability as in this case. The committee (which included Mr. H. C. Crotty, former President of the Brotherhood of Maintenance of Way Employes) agreed that the Carrier was liable for monetary damage from the first viable claim date until the date of declination, but that any damages subsequent to the date of declination had to be based on the merits. The Carrier did not respond timely to a timely filed claim. Carrier's liability on the procedural issue ceased as of April 22, 1988, the date of Carrier's response. No further payment should be considered because the Majority ruled only on the procedural; it did not consider the merits.

  
R. L. Hicks

  
M. C. Lesnik

  
J. E. Yost

  
M. W. Fingerhut

  
P. V. Varga