

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29922
Docket No. MW-28427
93-3-88-3-218

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

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

- (1) The claim* as presented by Assistant General Chairman G. L. Barker on June 8, 1987 to Regional Engineer G. R. Lilly shall be allowed as presented because said claim was not disallowed by Regional Engineer Lilly in accordance with Rule 122, Section 2(a) (Carrier's File 870513).

*The letter of claim will be reproduced within our initial 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 employe or employes involved in this dispute are respectively carrier and employe 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 Claim dated June 8, 1987, presented on the property by the Organization by certified mail to Carrier's Regional Engineer on behalf of furloughed Work Equipment Mechanics is a contracting out dispute alleging that since May 8, 1987, private contractors J. A. Riggs and Herzog Construction Company had two contractor mechanics performing maintenance on rental equipment operated by Maintenance of Way employees at the North Little Rock Yards. According to the Claim, the contractor mechanics were setting up machines and performing maintenance for 80 hours per week as they worked with

the three day gangs, work typically performed by Claimants. The Claim seeks "40 hours per week straight time, and 40 hours per week at the time and one-half rate of pay, from May 8, 1987, to continue, at the WEM rate of pay, until claimants are recalled and the positions are bulletined to the WEM class of employes."

The Carrier did not deny the claim within 60 days from the date it was filed. The Carrier declined the claim by letter dated October 30, 1987.

Rule 12, Section 2(a) provides:

"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."

The Organization seeks a sustaining award arguing that Rule 12, Section 2(a) clearly requires that "[i]f not so notified, the claim or grievance shall be allowed as presented." [emphasis added] The Carrier relies upon National Disputes Committee Decision 16 arguing that, at most, its failure to timely deny the claim exposes it to liability only for the period until it denied the Claim by its letter dated October 30, 1987.

National Disputes Committee Decision 16 and Awards following that Decision (see e.g., Third Division Awards 26213, 24269) govern this dispute. Under that line of authority, because of the untimely denial the Carrier is liable for the Claim as presented but only until the claim is denied - here, for the period May 8, 1987, through October 30, 1987. See Decision 16 ("The National Disputes Committee rules that receipt of the carrier's denial letter dated December 29, 1959 stopped the carrier's liability arising out of its failure to comply with Article V of the August 21, 1954 Agreement").

Third Division Awards 24298, 25100, 25309 and 27017 relied upon by the Organization are not on point. Those awards did not involve continuing claims of the type presented in this matter and as addressed by Decision 16.

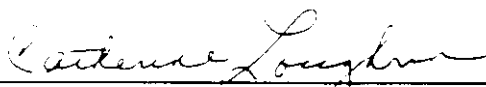
Given that this dispute was progressed before this Board only on the procedural question, the merits of the dispute are not before us.

The Claim will therefore be sustained as presented for the period May 8, 1987, through October 30, 1987.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 2nd day of December 1993.