

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 24229  
Docket No. 43866  
93-1-92-1-E-1265

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers  
(  
(Elgin, Joliet and Eastern Railway Co.

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board of our intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between the General Committee of Adjustment, Brotherhood of Locomotive Engineers and the Elgin, Joliet and Eastern Railway company involving the following claim:

Claim of Engineer H. R. Hoover for forty-two (42), days pay for each day of the violations of Article 67, paragraph 1, of the controlling agreement, wherein claimant was removed from service without a fair and impartial hearing.  
(Case KLE-77-91)."

FINDINGS:

The First 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 the 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 were given due notice of hearing thereon.

This companion case to First Division Awards 24227 and 24228 involving the same Claimant, is a time claim covering the period between October 5, 1990, when he attempted to mark up for service but was not allowed to do so until November 15, 1990, when the Claimant was notified by the Carrier that he was dismissed from service. The Organization claimed that withholding the Claimant from service was a violation of Article 67(1). The Carrier disagrees.

The Organization contends that the Carrier breached Article 69 of the Time Limit on Claims Rule of the Agreement. Article 69 states:

"ARTICLE 69 - TIME LIMIT ON CLAIMS

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty 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 sixty days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, 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.)

There is no dispute that a Claim was filed in this case and dated November 20, 1990, and received by the Carrier. The Carrier states that it denied this Claim by letter dated December 7, 1990, and that it placed the declination letter in a mailbox located in Kirk Yard Terminal Building at that time. Under Article 69(a) the Carrier, within sixty days of the date the claim was filed, had an obligation to "notify the employee or his representative of the reasons for such disallowance." The declination letter dated December 7, 1990 and placed in a mailbox located in Kirk Yard some 22 days after the Claimant was dismissed from service, and some 64 days after the Claimant was held out of service and some 102 days since he last performed service on the Carrier's property did not satisfy the notification requirement of Article 69 which required the Carrier to notify the employee or his representative of the reasons for such disallowance. It is not disputed that neither the Claimant nor his representative actually received the declination notice within the period of the time set forth in Article 69. The cases cited before this Board are inapposite to the facts and rules in the record before us. We shall sustain this claim under Article 69, and it shall not be considered as a precedent or waiver of the Carrier's position on the meaning of Article 67-Discipline. The Carrier's request to offset outside earnings or postponement time is rejected.

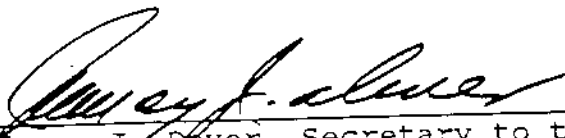
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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:   
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, the 22nd day of June 1993.