

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25996
Docket No. 45015
04-1-00-1-U-2211

The First Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former Chicago &
(North Western Railway Company)

STATEMENT OF CLAIM:

“Claim of Engineer F. K. Catalano, Union Pacific (former CNW) for 5% rate progression from June 1, 1998 through March 8, 1999.

Claim premised upon 1996 National Agreement, Article VIII, Rate Progression and 1996 System Agreement - Claim Handling Process.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On March 15, 1999, the Claimant filed a claim for a 5% wage progression for the period from June 1, 1998, through March 8, 1999. It is undisputed that the

Carrier never issued a denial of this claim. The Organization, therefore, has appealed the claim on the basis that the Carrier failed to deny the claim within the time limit specified in Paragraph 2 of the System Agreement on Claim Handling, reading as follows:

- “2. Should any time claim be disallowed, the Carrier, within sixty (60) days from the date same was filed, must notify the employee or his representative in writing of the reason(s) for such disallowance.”

The Organization asserts that Paragraph 8 of that Agreement now requires payment of the claim as presented. Paragraph 8 reads as follows:

- “8. If either party fails to comply with a time limit contained in this agreement, the claim shall be allowed (if the carrier’s failure) or withdrawn (if the organization’s failure). Claims so disposed of shall not be considered as a precedent or a waiver of the contentions of either party as to other similar claims.”

The Organization is correct that the Carrier’s failure to issue a timely denial of the claim requires that it be allowed, but not constituting a precedent or a waiver of the contentions of either party as to other similar claims. The Board, however, notes that Paragraph 1 of the Agreement also places an obligation upon the Claimant to file the initial claim on a timely basis. Paragraph 1 provides:

- “1. All time claims 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 (60) days of the date of the occurrence on which the claim is based.”

In the case before us, the Claimant’s initial claim, filed on March 15, 1999, attempted to reach back to June 1, 1998. At most, the claim could have gone back only 60 days. Any claim before that point would be barred by Paragraph 1. The fact that the Carrier failed to deny the claim did not breathe life into a dead claim. Accordingly, we will sustain the claim, without regard to the merits, but only from January 14, 1999, to March 8, 1999.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 10th day of March 2004.

