Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31848
Docket No. CL-32134
97-3-94-3-515

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11095) that:

(a) The Agreement was violated when Carrier failed to timely deny grievance submitted November 11, 1992, on behalf of Claimant Lawrence Diaz.

(b) Carrier be required to compensate claimant a total of 85 eight-hour days, as a result of the violation, as sought in the initial claim."

FINDINGS:

The Third 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.

At the relevant time, Claimant held a safety sensitive position as a Block Operator.

On March 10, 1992, Claimant sustained a personal injury while working at the Kingston Block Station. On June 3, 1992, after being released to return to duty by his physician, Claimant reported for a return-to-duty physical examination. Claimant was found unfit for duty and was temporarily medically disqualified by the Carrier due to the results of a drug test. Claimant was taking the drug Xanax which, after consulting a medical reference, the Carrier determined caused depressant side effects and had a caution against those taking the drug from engaging in hazardous occupations requiring complete mental alertness. Claimant was eventually permitted to return to work on September 22, 1992 when the Carrier's Medical Director determined that Claimant no longer had Xanax in his system.

By claim dated November 11, postmarked November 18, and received by the Carrier on November 20, 1992, the Organization asserted that "Claimant was illegally withheld from performing service by Carrier." On January 19, 1993 the Carrier denied the claim.

Rule 5-A-1 states:

"RULE 5-A-1 - CLAIMS FOR COMPENSATION

(a) All claims or grievances must be presented in writing on behalf of the employes involved to the designated officer of the Corporation authorized to receive same, within sixty (60) days from the date of occurrence on which the claim or grievance is based ....

When claims or grievances have been presented in accordance with this Paragraph (a) ... and are denied, the Corporation shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance ... in writing, of the reason for such disallowance. If not so notified, the claim or grievance will be allowed as presented.

* * *

(h) ...U.S. Mail ...will govern ...compliance with the various time limits...." (Emphasis added)

On the property, the Carrier conceded that "The first-level denial was dated January 19, 1993, beyond the 60 days limit" and further conceded that "The Company

does not dispute its violation of the time limits in this case." The Organization progressed the matter to this Board solely on the ground that the Carrier failed to timely deny the claim, arguing that the claim must be paid as presented.

The Carrier was obligated to deny the claim within 60 days. The Carrier states that it did not do so. This Board is limited to consider only the arguments properly raised before us. Based solely upon what has been presented and argued to this Board, in this case Rule 5-A-1 requires the claim be sustained.

AWARD

Claim sustained.

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 Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.