

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Staten Island Rapid Transit Operating Authority (SIRTOA)

Disputes: Claim of Employees:

1. That the Staten Island Rapid Transit Operating Authority (SIRTOA) violated the time limit provisions of the Agreement between the Baltimore and Ohio Railroad Company and all that class of Employees herein specified reprinted November 1, 1952, as amended, in particular, the addendum entitled Article V, Time Limits on Claims or Grievances effective January 1, 1955.
2. That the Staten Island Rapid Transit Operating Authority (SIRTOA) also violated other provisions of the controlling Agreement, in particular, Rule 15, between The Baltimore and Ohio Railroad Company and all that class of Employees herein specified reprinted November 1, 1952, as amended, when Electrician Steven J. DiSalvo was denied his seniority rights by not being placed on the Staten Island Rapid Transit Operating Authority (SIRTOA).
3. That accordingly, Electrician Steven J. DiSalvo be placed on the Substation Maintainers position denied him and he be compensated for all wages lost commencing October 14, 1980 until date he is placed on his bidded position of Substation Maintainer, both dates inclusive.

Findings:

The Second 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 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.

A claim was filed by the Local Chairman on November 24, 1980 wherein it was contended that Carrier hired and subsequently assigned a new employe to the position of "Sub-Station Maintainer" without posting a position bulletin. An outside person was hired for this position on October 14, 1980.

The Organization requests that this violation be corrected by bulleting the position and awarding same to the Senior Journeyman Electrician on the appropriate seniority roster desiring this position. A continuous time claim was submitted on behalf of Claimant for the difference in wages and incurred overtime at the punitive rate.

The Organization further contends that Carrier had not responded to this claim as of May 7, 1981 when Carrier's Labor Relations Director and the Organization's International Representative met to discuss labor relations matters. It is the Organization's position that Carrier had not complied with the Controlling Agreement's grievance appeal procedures, but instead attempted to cover up this mistake by composing and sending a letter of denial backdated December 31, 1980.

As to the claim's substantive merits, the Organization asserts that Claimant was recognized as holding a substation maintainer's position and was considered a satisfactory employee. In fact, it avers that he was recommended for the Substation Maintainer's position by the Superintendent on December 24, 1980 since he was the most senior in point of service of the three bid applicants.

Carrier contends that the claim is procedurally defective since the Organization had not responded to its denial letter of December 31, 1980 within the grievance appeal time limits of Article V of the addendum to the parties' basic agreements. It asserts that until May 7, 1981, the Organization had not responded to its denial, but made an oblique reference to the November 24, 1980 claim during the course of a conference pertaining to other subject matter. It notes that even if the denial letter was never received, it was nonetheless incumbent upon the Organization to present the claim to appropriate officers of the Carrier before processing the petition to the National Railroad Adjustment Board. In particular, it avers that Section 1(c) of Article V provides for initiation of proceedings before the Board within nine (9) months from the date of the decision of Carrier's highest designated officer. It maintains that inasmuch as this requirement has not been met, the claim is invalid.

As to the claim's substantive merits, Carrier argues that Claimant was not qualified for the position since he was listed on the seniority roster as a substation operator rather than as a maintainer. It asserts that these positional distinctions were later recognized by the parties when a memorandum of agreement, dated September 22, 1981, expressly acknowledged the positions' separate nature and qualifications. Moreover it contends that contrary to the Organization's averment that Carrier violated Article 15 by failing to bulletin a vacancy, a vacancy had not existed on November 24, 1980. The vacancy arose on December 16, 1980.

In our review of this case, we are mindful of the conflicting assertions regarding the initial denial or untimely denial of the November 24, 1980 claim. However, consistent with Article V of the addendum to the parties' agreements and the explicit requirements of Section 3, First (i) of the Railway Labor Act, as amended, the claim should have been formally appealed to Carrier's highest designated official and discussed in conference on the property before being progressed to the National Railroad Adjustment Board. From our examination of the record this has not been done and the claim is procedurally invalid. The parties' written correspondence does not satisfy Article V's requirements.

Form 1
Page 3

Award No. 10018
Docket No. 9554
2-SIRTOA-EW-'84

As the final arbiter in the grievance appeals process we are bound by the parties' mutually agreed upon rules and the Railway Labor Act to give effect to the specified appellate procedures and this fidelity to these invariant requirements must be strictly observed. For these important reasons, we are constrained to dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of August, 1984.