

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, Carman James M. Horvath was unjustly dismissed from the service of the Alton and Southern Railway Company for a period beginning July 3, 1975 and ending March 5, 1976.
2. That accordingly, the Alton and Southern Railway Company be ordered to compensate Carman James M. Horvath for all time lost, plus six per cent (6%) interest on wages, reinstatement to service with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired, reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of service.
3. That the Carrier violated the procedural provisions of Article V of the National Agreement dated August 21, 1954, when letter dated August 15, 1975 directed to Mr. Emmett D. Cox, Local Chairman, from Mr. W. B. Needham, Superintendent, The Alton and Southern Railway Company, failed to be complete or concise by not setting forth in writing the reason for declining claim.

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 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.

This claim arises out of disciplinary proceedings that resulted in the dismissal of the claimant for failing to obtain permission for an absence on June 19. The threshold issue involves a procedural question. The

Organization asserts Carrier violated the August 21, 1954 National Agreement on the basis its supervisor did not issue a proper denial following the presentation of the claim to him. Article V thereof provides:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee 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 employee 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 supervisor's letter dated August 15, 1975 stated in pertinent part:

"Mr. Emmett D. Cox
Local Chairman
Brotherhood Railway Carmen
613 North 17th Street
Belleville, Illinois 62221

Dear Sir:

Reference to your letter of August 11, 1975 in regard to your views and opinion of investigation with Mr. James Horvath held July 3, 1975.

Referring to the third paragraph of your letter as to your request in behalf of Carman James Horvath being reinstated to service with seniority rights, vacation rights, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensation for all time lost plus 6% annual interest is declined.

Yours truly,
/s/ W. B. Needham
W. B. Needham"

Carrier attempts to justify this brief declination on the grounds the Organization knew the reasons for the declination and, moreover, the requirements of Article V are that such reasons be provided within sixty (60) days from the date claim is filed and that was done at a subsequent stage. We do not read Article V in this broad way. A recent award of this

Division involving the same parties, the same agreement and the same supervisor and a very similar letter reached the conclusion we adopt. That decision, Award 7371 (Franden), reviewed the awards related to this matter and concluded:

"The letter from Carrier officer Needham dated August 15, 1975 quoted above does nothing more than state that the claim is declined. No reference is made to earlier denial letters or conferences, to the Carrier's position that no rule in the agreement has been violated, to a defense based upon the claim lacking basis or anything indicating whether the claim is being denied on the merits or on some procedural issue.

The provisions of Article V paragraph (a) have been rather liberally construed but we believe that to hold that the letter declining the claim in the instant case meets the requirements of that paragraph would in effect remove from the agreement the words 'notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance.'"

Carrier places its reliance upon another recent Award 7341 (McBrearty) involving the same parties, same agreement and the same supervisor reaching an opposite conclusion. Although we would hope for consistency in the decisions of this Board, this split on this procedural matter is unfortunate. Nevertheless, a choice must be made and we adhere to the Franden award for the reasons given and the additional reason that the plain wording of Article V should be followed.

Carrier's submission cites various awards to the effect its liability should be limited to the date of its last denial, namely September 8, 1975. We do not read Article V in that way and it does not appear that any of the awards cited for such limitation involved Article V. On this basis the claim is allowed for lost wages but not interest and other benefits sought and it is unnecessary to consider the merits of the claim.

In accordance with the rule we will allow the claim as presented with the understanding it does not become a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

A W A R D

Claim sustained.

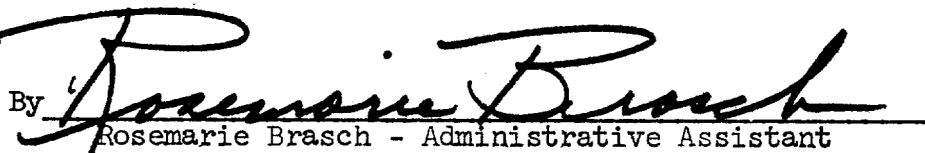
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Award No. 7500
Docket No. 7266
2-A&S-CM-'78

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1978.