

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

Parties to Dispute: (System Federation No. 10, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Western Pacific Railroad Company violated the terms of the controlling agreement when Master Mechanic R. L. Millhiser did not make reply to Local Chairman Churchill's claim dated February 7, 1977, until April 13, 1977, which is sixty-five (65) days after date said claim was filed.
2. That under the terms of the controlling agreement, Carmen M. V. Paulson and P. Parkerson were unjustly dismissed from the service of the Western Pacific Railroad Company by letters dated January 27, 1977.
3. That accordingly, the Carrier be ordered to make Carmen M. V. Paulson and P. Parkerson whole by compensating them for all time lost from December 2, 1976 until returned to service on May 20, 1977.

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 Board has carefully reviewed the detailed record submitted to the Division and concludes that the pivotal question before us is the status and significance of the February 23, 1978 settlement letter.

In the 2nd and 3rd paragraph of this document, carrier's Labor Relation's Officer wrote to the General Chairman that "It was understood that in full and final settlement of this particular claim, claimants would be allowed their wage loss from the time they were dismissed by letter dated January 27, 1977 until the claim was denied by Master Mechanic R. L.

Millhiser by letter dated April 13, 1977. This settlement is being made solely because of the Company's failure to comply with the Time Limits of Rule 34." It was not challenged or disputed until May 16, 1978.

While we recognize that a response requires, at times, a reasonable period of thought and analysis we do not believe that waiting until May 16, 1978 comported with this requirement, particularly in view of the fact that the February 23, 1978 letter explicitly expressed a jointly agreed upon disposition of the claim.

Claimants were under a more compelling obligation to take issue with or deny the conference settlement terms rather than wait approximately twelve (12) weeks before responding. It was too long a period and was further compounded by claimants' changing the claimed loss time date from January 27, 1977 as stated in their August 3, 1977 letter to December 2 and 3, 1976 respectively.

There is no intimation that the February 23, 1978 letter was tentative or suggestive and every indication that it was conclusive. Based on these findings, we will deny the claim.

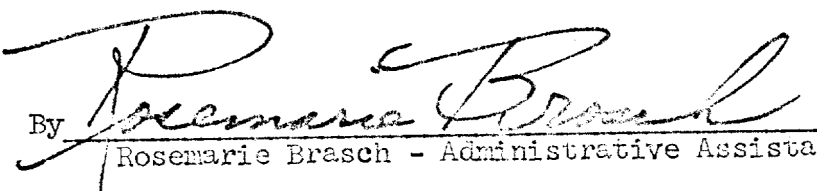
A W A R D

Claim denied.

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 27th day of September, 1979.