

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and North Western Transportation Company violated Article V of the August 21, 1954 Agreement when Director of Labor Relations Fremon failed to give written reasons for denial of General Chairman Murphy's appeal dated August 22, 1979.
2. Carmen J. W. Kreuser, A. D. Lamine, M. M. Beernteen, and G. J. Verkler, Green Bay, Wisconsin, were denied their contractual rights when the Chicago and North Western Transportation Company assigned mechanics-in-charge to perform emergency road work.
3. That the Chicago and North Western Transportation Company be ordered to compensate Carmen Kreuser, Lamine, Beernteen, and Verkler as follows:

J. W. Kreuser: Eleven and one-half hours at time and one-half for March 29, 1979.

A. D. Lamine: Seven hours at time and one-half for March 30, 1979.

M. M. Beernteen: Seven hours at time and one-half for March 28, 1979.

G. J. Vernkler: Six hours at time and one-half for April 2, 1979.

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.

A procedural issue has been raised by the organization, namely, that the alleged letter of denial executed by the Director of Labor Relations on October 17, 1979 in response to the organization's appeal of August 22 was not complete as

required by Article V (1) of the agreement between the parties.

The letter of October 17, 1979 was supplemented by further letter of February 19, 1980. The organization alleges that the carrier did not effectively deny the claims until the February letter which was beyond the sixty (60) day time limit permitted by the agreement.

The applicable portion of the October 17, 1979 letter is as follows:

"At the present time, my file is incomplete and I am unable to respond to all the information contained in your appeal letter. At such time as I am in possession of all the facts, I shall write you again. In the meantime, in order to comply with the time limit, please consider the claims denied for lack of support of schedule Rules and agreements."

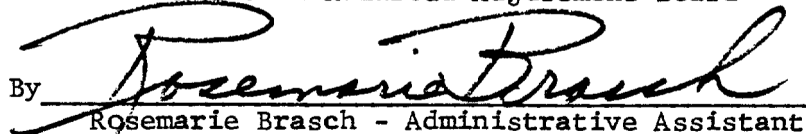
A review of the Awards indicate that this Board has been liberal in its determining the efficacy of a denial of a claim for purposes of complying with Article V (a). Nevertheless, in this instance it is apparent that there is no basis set out for the denial in the carrier's letter. A reading of the paragraph set out above, in its entirety, confirms that the denial therein is merely pro forma with reference to the schedules and agreements merely as an attempt to comply with the contractual time limit. While in some instances the denial of a claim merely for lack of support of schedule Rules or agreements may be satisfactory, to use this in basis for denial in light of the alleged ignorance of sufficient basis to deny the claim would make a mockery of the contractual requirement and we shall support the claims based upon this procedural defect.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.