

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Louisville & Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Louisville and Nashville Railroad Company violated Article V of the May 20, 1955 Agreement when the Master Mechanic failed to give a timely reply to the Local Chairmans (sic) claim letter dated September 3, 1980.
2. That the Louisville and Nashville Railroad Company failed to give Hazard, Kentucky Carman E. E. Salley, a proper call for a Second Shift vacancy on May 14, 1980.
3. Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman E. E. Salley eight (8) hours at the time and one-half rate of pay.

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 employees involved in this dispute are respectively carrier and employees 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.

On May 14, 1980, the Claimant, E. E. Salley, was assigned to a first shift -- 7:00 A.M. to 3:00 P.M. -- Carman position at Hazard, Kentucky. Mr. Salley was relieved from his regular assignment at 3:00 P.M., and had left the property before it was known there would be a vacancy on the second shift -- 3:00 P.M. to 11:00 P.M. -- on a train yard position. Mr. Salley's home was called at 3:30 P.M.; and he was not at home. The next Carman standing for the call was then contacted and worked the second shift position.

A claim was filed on behalf of Mr. Salley by letter dated July 7, 1980, which was declined by the General Foreman by letter dated July 7, 1980. The claim was appealed by Local Chairman Fugate to the Master Mechanic on September 3, 1980. The record reveals the existence of a letter dated September 22, 1980, signed by Master Mechanic Davis declining the claim. Local Chairman Fugate wrote to Mr. Davis by letter dated December 8, 1980 stating the position that claim should be paid since the time limit for handling the claim had expired. By letter dated December 13, 1980 Mr. Davis wrote to Mr. Fugate advising him that he had answered the claim on September 22, 1980 and enclosed a copy of the September 22, 1980 letter.

The Organization contends that the Master Mechanic in an attempt to cover up the apparent error on his part attached the letter he alleged was written on September 22, 1980 to his December 13, 1980 letter. The Organization states that the claim must be allowed as presented because the Carrier violated Article V(a) of the May 20, 1955 Agreement when the Master Mechanic failed to make a reply to the Local Chairman's letter of claim dated September 3, 1980 within the sixty-day time limit of Article V (a). The Carrier disagrees, stating that the September 22, 1980 letter was mailed in accordance with the Carrier's usual procedure for handling correspondence.

The Organization contends that it did not receive Master Mechanic Davis' response to its appeal of September 3, 1980 within the sixty-day time limits. The Carrier produced a copy of a letter dated September 22, 1980 declining the September 3, 1980 appeal. We recognize General Chairman Burnside's statement, set forth in his May 7, 1981 letter to Director of Labor Relations Sale, that:

"With reference as to what can be proven at this level regarding who received what and when, I cannot agree with your views. As we both know Mr. Davis is the Master Mechanic for Hazard, Ravenna, Loyall and Corbin, Kentucky plus several other smaller points. We have at this time a dispute at Ravenna, Kentucky involving Mr. Davis's failure to properly give a reply to Local Chairman McIntosh at that point. We also have a dispute involving the same thing, time limits. And inasmuch as the other Local Chairmen on the System have had very few problems along this line to any degree, if any. This is indicative of a failure on Mr. Davis or his staff to properly handle matters properly. Therefore, your statement that Mr. Davis has no difficulty in handling his correspondence, is facitious to say the least..." (Emphasis by Mr. Burnside)

Based on the limited evidence of record before this Board we are compelled to find that the Organization has not met its burden of proof that Article V(a) time limits was violated. This Board is of the firm conviction that good labor relations requires fundamental respect for the word of each of the parties. The limited evidence in this case does not support a finding that the September 22, 1980 letter was a fraud.

Concerning the merits of this claim, the Carrier was not in violation of Section 18 of the Memorandum of Understanding effective April 18, 1946 (Appendix "B"). The Carrier became aware of the need to fill the temporary vacancy for the 3:00 P.M. to 11:00 P.M. shift at 3:00 P.M., after Mr. Salley had left the Shop. The Carrier waited a half hour to call Mr. Salley at home even though its needs were for an employe at 3:00 P.M. Mr. Salley was called at 3:30 P.M. and he was not at home. Mr. Salley was not available at the time of the call and thus is not entitled to payment under Section 18 of Appendix "B".

Form 1
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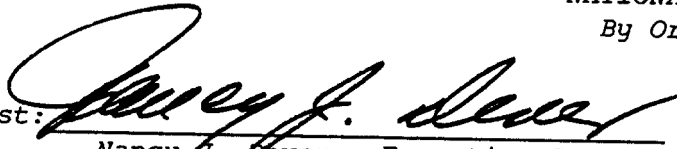
Award No. 10248
Docket No. 9781
2-L&N-CM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1985.