

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10893
Docket No. 10745-T
2-B&O-CM-'86

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement when on the date of December 26, 1982 they arbitrarily deprived Carmen, A. Nocera, and S. Medina, New Castle Jct., Youngstown, Ohio, of work to which they were entitled, work of inspecting, testing air brakes, etc., as per the provisions of Rule 144 1/2 of the controlling Agreement, and allowed train crews to perform such work in their stead, while claimants were placed in temporary furloughed status.

2. That the Baltimore and Ohio Railroad is in violation of the time limits for responding to claims or grievances, as per the provisions of Rule 33 of the controlling agreement, relative to the instant case.

3. That accordingly, Carrier be ordered to compensate Claimants herein account such violations of their controlling agreement as follows:

Carman: A. Nocera for eight (8) hours at the
time and one-half rate of pay

Carman: S. Medina for two (2) hours and forty
(40) minutes 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 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.

With respect to the essential issues of this dispute, the Board concludes that these are identical to those addressed in Second Division Award No. 10892. That case also was between the same parties. There is a difference, however, because in this case, the Organization also asserts that the Carrier violated Rule 33 of the Agreement. That Rule, in pertinent part, reads:

"Should any such claim *** be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim *** in writing of the reasons for such disallowance. If not so notified, the claim *** shall be allowed as presented, but this shall not be considered as a precedent *** as to other similar claims or grievances."

Turning to this threshold issue, the Organization's Claim was submitted on February 18, 1983, and it was received by the Carrier on February 22, 1983. It was then denied by letter dated April 19, 1983. The Organization contends that this denial letter was sent by the Carrier's mail service and was not received until April 27, 1983, six (6) days past the 60-day time limits specified by Rule 33. In support of this contention, the Organization has submitted a photocopy of an envelope which it maintains contained the April 19 letter. The envelope does not bear a U.S. Postal Service postmark.

On this issue, the evidence before the Board consists of a copy of the Carrier's denial letter on which the date April 19 is shown and the Organization's photocopy of the front of an envelope addressed to it. This evidence is insufficient. The Board has no way of knowing when the letter was sent or what was contained in the envelope. Accordingly, we do not find that sufficient evidence has been submitted by either party to rule on this issue. Consequently, there is nothing to distinguish this Claim from Award No. 10892. Part 2 of the Claim must, therefore, be dismissed. Concerning the merits, the facts in this matter are also identical to Second Division sustaining Award No. 10117, adopted October 10, 1984, between the same parties. Since there is no new evidence to warrant a different conclusion, this Board sustains Part 1 of the Claim, based upon Award No. 10117.

With respect to Part 3 of the Claim, we are satisfied that the violation was not merely technical nor a trivial matter, since the Petitioner did lose work. Moreover, the Board notes that the damages claimed were not challenged on the property, although the Carrier had ample opportunity to question the amount claimed. Accordingly, following the same concepts that controls the parties with respect to other matters not raised on the property, we sustain the amount of damages claimed.

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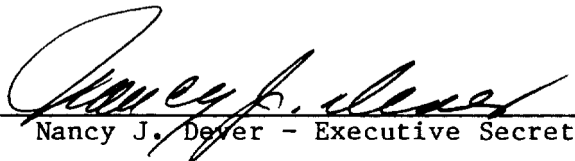
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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 25th day of June 1986.