Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11039
SECOND DIVISION Docket No. 10586-T
2-SOO-CM-'86

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Soo Line Railroad Company

Dispute: Claim of Employes:

1. That under the current agreement, the Soo Line Railroad Company violated Rules 27, 28, 31 and 94 of the Shops Craft Agreement, as amended, and Article VI, "Coupling, Inspection and Air Test", of the 1975 National Agreement, when on September 4, 1982, the Soo Line Railroad Company ordered and allowed the Switchmen at Rices Point to perform the carmen's work of coupling, inspection and air test of trains, where carmen have previously performed such work on Saturdays.

2. That the time limit provisions of the agreement were violated when Foreman R. J. Erkel failed to give reasons for denying the claim in his letter to the Local Chairman dated September 28, 1982.

3. That accordingly, the Soo Line Railroad Company be ordered to pay Carman Donald Noble, Superior, Wisconsin, penalty time of eight (8) hours at time & one-half at carmen's rate of pay on September 4, 1982 for not being allowed to perform the carmen's work of coupling, inspection and air test trains at Rices Point, where carmen had previously performed such work.

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.

Claimant is employed by the Carrier at the Carrier's repair facility, Belknap Yards, Superior, Wisconsin. On Monday through Friday, the Carrier has assigned Carmen to perform duties at its Rices Point Yard. If there was not sufficient work for the Carmen at the Rices Point Yard, then the Carmen would

return to the Belknap Repair Shops to finish their shift. Prior to the date that this Claim arose, when there was a switching job performed at Rices Point on Saturday, coupling, inspection and air test work that was needed to be performed on cars that were eventually taken to various grain elevators, interchange yards or elsewhere was performed by a Carman.

On Saturday, September 4, 1982, Claimant was not on duty. On that date a Switchman, rather than Claimant performed coupling, inspection and air test work on cars at the Rices Point Yard. As a result of a decline in business, the Saturday work previously performed by a Carman had been eliminated by the Carrier. According to the Carrier, it could not justify sending a Carman to the site of the work on Saturday and provisions exist for Switchmen to do this work.

On September 27, 1982, the Organization's Local Chairman filed the instant Claim. On September 28, 1982, Carrier denied the Claim using what appears to be a pre-printed form as follows:

"SOO LINE RAILROAD COMPANY

Date: Sept. 28 1982

To: Steve Flagstad
Local Chairman
Carman Lodge 661

Fr: Robert J. Erkel
Loco. & Car Foreman
Soo Line Railroad
Superior, Wisconsin 54880

Time claim submitted Sept 27th 1982 on behalf of Don Noble are denied.

No rules violated."

The underscored portions were filled in by hand.

Initially, the Organization argues that the Claim should be sustained since the above quoted September 28, 1982 letter from the Carrier does not comply with Rule 31 of the Controlling Agreement in that no reasons were given for denying the Claim. Rule 31 states:

> "1. All claims and 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 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."

Prior Awards have considered this issue. Where no reasons are given for declining a claim, or where the denial is simply pro forma to meet time limits in a contract, claims have been sustained for failing to give reasons in such denials. Second Division Award Nos. 9198, 7500, 7371, and 7349. However, where a Carrier denies a claim stating that the denial is based upon the claim not being supported by any rule, the requirement of stating reasons in the denial has been met. Third Division Award No. 21132, Second Division Award No. 10721. Indeed, even in the Awards holding that pro forma denials are insufficient, those Awards state that where the denial is based upon the lack of a violation of rules, the denial is sufficient. See Second Division Awards Nos. 9198; 7500; and 7371. Here, the denial clearly states "No rules violated." On the basis of the foregoing Awards, such a denial was sufficient.

With respect to the merits of the Claim, the Organization argues that Rules 27, 28 and 94 of the Controlling Agreement have been violated since Carmen previously performed the work and a decline in business is not a defense to a claim for the work. On the other hand, the Carrier advances three positions. First, the Carrier asserts that the Claim should be denied since the Rices Point Yard is not a departure yard; therefore making Article VI of the December 4, 1975 Agreement not applicable. Second, the Carrier asserts that the work involved is not exclusively reserved to the Organization by rule, agreement, or practice. Third, the Carrier argues that there was not sufficient work at Rices Point or Belknap Yard to justify employing Carmen at Rices Point.

We find it unnecessary to address all of the defenses raised by the Carrier. It is undisputed in this record that the Saturday Carmen's work at Rices Point was changed due to a decline in the Carrier's business and further, even when there is Carmen's work at Rices Point, such work is not always of a full time nature, but instead the work available there has been performed by Carmen, and, when finished, the Carmen then completed their shift at the Belknap Repair Shop. It is further undisputed that on the Saturday in question, no Carman was on duty. Article VI of the December 4, 1975 Agreement seems to control this case.

Article VI protects Carmen's work from being assigned to employes other than Carmen, except where there is not sufficient amount of work to justify employing a Carman. The burden is on the Organization to prove all the essential elements of its Claim. We are not satisfied that, in light of the original part-time nature of the Carmen's work at Rices Point, the admitted decline in business and the fact that no Carman was on duty on the Saturday in question, that the Organization has satisfied its burden in this case of showing that there was sufficient amount of work available. Without such a showing, the Claim must be denied.

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 15th day of October 1986.