

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(International Association of Machinists and Aerospace
(Workers
Parties to Dispute: (
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That the Carrier deprived Machinist R. Luveano (hereinafter referred to as Claimant) of work that was contractually his by improperly assigning the outbound crew the task of cutting unit #4367 from consist #01-FRRVY-07, on December 6, 1984, thereby violating the provisions of Rule 57 and Article V coupling, inspecting and testing of the September 25, 1964 Agreement.
2. That the Carrier be ordered to compensate Claimant a call or two (2) hours and forty (40) minutes at the Machinist overtime rate as per Rule 11 of the Motive Power and Car Department Agreement.
3. That the Carrier is in violation of Rule 38(b) in that Mr. Schnobelen failed to give a reason or reasons for the disallowance, therefore, his denial is procedurally defective.

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.

As third party in interest, the Brotherhood of Locomotive Engineers was advised of the pendency of this case, but chose not to file a Submission with the Division.

This Claim involves the Carrier assigning the work of cutting Unit 4367 from a Consist to an Outbound Crew on December 6, 1984. The Organization claimed this was in violation of Rule 57 of the Controlling Agreement. The Organization in their Claim raised a procedural issue that reads as follows:

"3. That the Carrier is in violation of Rule 38 (b) in that Mr. Schnoebelen failed to give a reason or reasons of the disallowance, therefore, his denial is procedurally defective."

The Organization argued that Rule 38 (b) reads in pertinent part:

"Should any such claim or grievance be disallowed, the Carrier shall within 60 days from date same is filed notify whoever filed the claim or grievance (employee or his representative) in writing, the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented . . . "

The Claim was filed on December 12, 1984, and the Carrier's response reads as follows:

"Fresno, California
December 12, 1984

Phil Ward
Local Chairman
IAMAW

Refers to your time claim submitted date for one call at two hours and 40 minutes overtime rate on behalf of Machinist Luveano for cutting unit 4637 from consist of 01-FRRVY-07 on December 6, 1984.

Please be advised claim has been denied.

(signed)
C. R. Schnoebelen
Trainmaster"

The Organization stated the foregoing letter does not comply with Rule 38 in that it gives no reasons for the Claim being denied, and therefore the Claim should be sustained on that basis.

The Carrier contended that the letter from its Trainmaster dated December 12, 1984, does comply with Rule 38 (b). The Carrier stated the

letter gives an adequate reason for denying the Claim by referring directly to the Local Chairman's letter filed on the same date. While the Trainmaster's letter was tersely written, it was denied on the basis that the Claim does not make out a prima facie case of the violation of the Agreement as claimed. The Carrier also noted that the Trainmaster's response was immediate and indicated the Claim had no merit and required no further investigation.

The Board, upon complete review of the evidence, finds that both sides submitted numerous awards from this and other Divisions supporting their contentions regarding this threshold issue. The Board, however, is not convinced that the Carrier responded to the Claim in the manner that was required by Rule 38 (b). Simply referring to the Local Chairman's letter and denying the Claim does not give the "reasons for such disallowances." These Rules were promulgated so that the parties could fully discuss their positions and attempt to settle matters during the grievance process. The Board notes that the Carrier did not comply with this provision until March 14, 1985, over three months after the Claim had been filed. The Board sees no alternative but to find the Carrier's response to the Claim filed on December 12 was procedurally defective and to sustain the Claim without ruling on the merits.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer, Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1987.