

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk and Western Railway Company violated Rules 7 and 11 when on July 13, 1988, Carman H. Knight, Jr. reported to his current assignment at 3:00 p.m. and was not allowed to work after Carman Knight contacted his Supervisor W. Canaday, who advised him to stay on his current assignment as the displacements created through "rolling and bumping" had not been posted as of that date. This after local chairman met with management at Norfolk and was assured all assignments would be posted on Tuesday and effective Wednesday for proper notification.

2. That the Norfolk and Western Railway Company violated Article V(a) of the August 21, 1954 National Agreement during the processing of this claim on the property.

3. That because of such violation, the Norfolk and Western Railway Company be ordered to compensate Carman H. Knight, Jr. four (4) hours wages at the pro rata rate for their failure to allow him to work his current assignment after he reported to work and the job assignments had been posted. Carman Knight had called Supervisor W. Canady, who informed him that the job assignments had not been posted for him (Knight) to report for work on his current assignment. Carman Knight reported for work on his current assignment and was not allowed to 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 was displaced from his assigned shift with rest days of Monday and Tuesday. The Organization alleges that Claimant was informed to stay on his assigned shift. Claimant reported on Wednesday for his current assignment only to be informed that he was reassigned with his new assignment having rest days of Tuesday and Wednesday. Claimant was denied permission to work. On merits, the Organization argues that the Carrier violated Rules 7 and 11 of the Agreement. On procedural grounds, the Organization argues that the Carrier failed to decline the Claim in a timely manner.

The Carrier denies that Rules No. 7 and 11 are applicable. Carrier further denies that Claimant was informed to stay on his assignment. Carrier argues that the historical practice on the property was followed and that the Claimant knew or should have known the appropriate information and his displacement rights. It denies any Agreement violation. As for the alleged procedural error, the Carrier maintains it denied the Claim in a timely manner.

As a preliminary point, review of the record fails to document that either the envelopes, or the stenographer's letter dated February 3, 1989, was handled on property. There is no reference to either of them in any correspondence and they are not presented by both parties to the dispute. This Board holds them to be new evidence and by long established precedent they shall not be considered.

On procedural grounds a time limit violation was raised on the property. The Carrier has the burden to prove that its declination occurred in a timely fashion. The evidence indicates that the Organization appealed the Claim on October 19, 1988, and then by letter dated December 30, 1988, raised the time limits procedural argument. By letter of February 8, 1989, Carrier states in part:

"As you are well aware Master Mechanic Smith's letter of declination dated December 13, 1988 was mailed on December 13, 1988. However, due to a typographical error it was mailed to the wrong house number but correct street. The letter was returned by the U.S. Postal Service. The letter was subsequently placed in its entirety in a new envelope to the correct street address during the week of January 2, 1989."

The Organization and Carrier maintained their respective positions in the final conference on property.

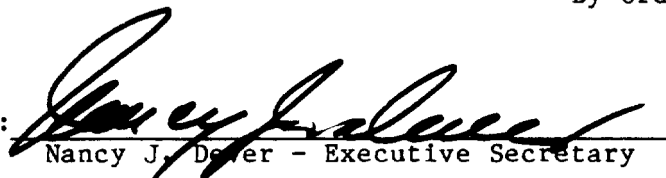
The Agreement holds the Carrier to respond within sixty (60) days. Such declination must be progressed in accordance with the applicable time limits. Mishandling of mail can occur at any point or time, but no language of the Agreement or practice of the parties has been shown to alter the intent of the August 21, 1954 Agreement, Article V, Carriers Proposal No. 7. The burden of proof lies with the party that mailed the Claim or declination that it was timely handled. This record shows clearly that it failed to reach the Organization on time or in a timely manner. The Carrier violated the Agreement and a procedural violation occurred. Without reaching the merits, the Claim is therefore sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1991.