Award No. 2652
Docket No. 2360
2-MP-FO-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Firemen and Oilers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated provisions of the August 21, 1954 Agreement, particularly Article Five (5) when the General Foreman failed to answer correspondence, as provided for in Article Five (5) of the Agreement referred to.

2. That accordingly the Carrier be ordered to pay claimants Lawrence P. Brock, Joe Pruitt, C. C. Philon and Walter Patterson as follows:

Eight (8) hours pro rata rate to Lawrence P. Brock for March 2, 7, 8, 9, 10, 11, 14, 15, 16, 17, 1955.

Eight (8) hours pro rata rate to Joe Pruitt for March 2, 8, 9, 10, 11, 17, 1955.

Eight (8) hours pro rata rate to C. C. Philon and Walter Patterson for March 17, 1955.

EMPLOYES' STATEMENT OF FACTS: On April 16, 1955, Local Chairman Preston Stanback addressed a letter to General Car Foreman F. M. Warren at the Dupo, Illinois, Missouri Pacific Shops, in which he requested that the Claimant Lawrence P. Brock be paid eight (8) hours at pro rata rate for March 2, 7, 8, 9, 10, 11, 14, 15, 16, 17, 1955.

That Claimant Joe Pruitt be paid eight (8) hours at pro rata rate for March 2, 8, 9, 10, 11, 17, 1955.

That Claimants C. C. Philon and Walter Patterson be paid eight (8) hours pro rata rate for March 17, 1955.

was never received and, as far as the carrier knows, was never sent. The time limit rule cannot be invoked to change the effect of the disposition of claims as agreed upon with the duly authorized representative of the employes.

As pointed out in the statement of facts, the claim in behalf of Laborer Pruitt was paid. We do not know why the claim in his behalf was included in the claim progressed to your Board. We can't quite believe an effort is being made to require the carrier to pay twice. All Article V requires is that the "claim or grievance be allowed." The carrier allowed the claim in behalf of Laborer Pruitt. No additional penalty is called for.

It is understandable why no effort was made to progress the instant claims on their merit. Some unrest existed due to the manner in which the work of cleaning up the repair tracks was being done. Carmen helpers were required to clean up a part of the accumulation of scrap and dirt resulting from their own work. Such work has never been assigned to any craft or class exclusively but is work which laborers as well as others may perform when required. Helpers have as a matter of practice always helped in cleaning up the repair track and in loading scrap. Such unskilled work is incidental to the work of the helpers. A claim with no merit should be sustained on a procedural point only if clearly required. Here the carrier did not deliberately or through oversight violate the time limit rule but rather the master mechanic was well aware of all the facts and because of the understanding reached in conference felt it was not necessary to reply in writing. Article V of the August 21, 1954 agreement specifically permits agreements modifying the time limits established in the case of individual time claims. In the instant case, the understanding reached in conference with the duly authorized representative of the employes disposed of the claim and the time limit rule was no longer operative as to the instant claim.

In conclusion, the carrier repeats that we are not requesting your Board to ignore or lessen the force and effect of the time limit rule but rather the carrier insists on strict enforcement of the rule. But in the instant case the employes should not be permitted to entrap the carrier by stating a claim has been withdrawn and then demand payment of the claim on the basis of the time limit rule. This claim should be denied.

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 employe 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.

The parties to the dispute were given due notice of hearing thereon.

Article V, Section 1(a) of the Agreement of August 21, 1954 provides that the carrier shall, within sixty (60) days after any claim is filed, notify whoever filed the claim in writing of the reasons for disallowance or the claim shall be allowed as presented.

It is undisputed that the carrier did not comply therewith in this case. It seeks to avoid the allowance of the claim by showing a verbal agreement to withdraw the claim. Its evidence thereon is disputed and we have no

facilities to resolve that dispute. When the carrier relies upon such a verbal agreement instead of giving a written disposition as required by the agreement, it has the burden of proof to establish the same. Accordingly part 1 of the claim must be sustained.

In connection with part 2 of the claim, it appears that, by his letter of September 1, 1955, the general chairman accepted an offer of settlement of the claim of Joe Pruitt and appealed the "claims of other employes." Under such circumstances part 2 of the claim must be denied as to Joe Pruitt and sustained for the claims of other employes listed .

AWARD

Claim sustained to the extent set forth in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October, 1957.