

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

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the procedural provisions of Rule 27(a) of the Communications Agreement effective August 1, 1977 by failing to state in writing their reasons for such disallowance of claim in their letter dated February 24, 1978.
2. That the Missouri Pacific Railroad Company violated Rule 1 of the Communications Agreement effective August 1, 1977 and Article III of the September 25, 1964 Agreement when Carrier assigned on Friday, December 30, 1977, Signaller Homer Hawkins to perform Communications Maintainers' work, i.e., make the annual FCC Radio Frequency and Modulation check, and inspection additionally, install a second channel to the existing radio with a transmit and receive crystal of 160.470 MHZ at Carrier's Base Station at Mitchell Yard, Mitchell, Illinois.
3. That, accordingly Carrier be ordered to compensate Communications Maintainer H. G. Heise for December 30, 1977 two hours and forty minutes (2'40") at the time and one-half rate.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, Mr. Heise, herein seeks pay for work performed by another individual because, allegedly, the work by contractual commitment belongs to the craft of Claimant and not to the craft of the party utilized.

At the onset the Organization seeks a favorable ruling for the reason that the Carrier failed to meet the time limits embodied in Rule 27(a). That rule reads in pertinent part:

"Should any claim or grievance be disallowed the carrier shall, within 60 days ... notify whoever filed the claim ... in writing of the reasons for such disallowance."

The record reveals that well within the time limits the carrier notified the Organization of its declination of the claim. The stated reason for denial was: Mitchell is a joint terminal in which maintenance is performed by Communication Maintainers represented by I.B.E.W. and the B.R.S. Therefore claim has no merit and is denied."

The organization maintains that the denial is inconclusive and therefore the reasons for denial do not constitute a declination.

We disagree. As the record points out the problem stems from jurisdictional matters involving two crafts and while the response may not have met the Organization's expectation it does give a reason with substance as required by the contract. We find that the time limit rule was not violated.

The carrier points out that the geographical area under consideration was a part of the old C&EI route which was merged into the Missouri Pacific Railroad on October 15, 1976. At the time of the merger C&EI employees doing such work were represented by the B.R.S. At the time of the merger the bargaining agreements between the carrier and I.B.E.W. and between the carrier and the B.R.S. were not altered by reason of the merger and continued to apply to the same territories to which they applied prior to the merger. Consequently the use of an individual at Mitchell under the terms of the B.R.S. agreement was proper and did not violate the I.B.E.W. agreement as herein claimed. It further points out that the National Mediation Board had certified the B.R.S. as bargaining agent for communications workers on the C&EI property which included Mitchell.

By written submission the B.R.S. avers that the carrier's statements are correct and the work was properly performed by the individual represented by the B.R.S.

Contra the foregoing record the claimant's Organization seeks to enforce their claim by pointing out in the submission that the carrier had made numerous statements to the effect that Mitchell yard was a part of the Missouri Pacific Railroad and that it was part of the Missouri Pacific St. Louis Terminal. There is little explanation of the context within which those statements were made. It is evident that the Mitchell yard is now a part of the Missouri Pacific Railroad for corporate purposes and has been since the merger. However, statements to that effect do not negate the position of the carrier and the Brotherhood of Railroad Signalmen with respect to representation rights and past practice. Claimant takes no specific exception to the claim by the carrier and the B.R.S. regarding the history and representation rights determined by the parties and the N.M.B. This Board has no jurisdiction over such matters.

The complaining organization simply asserts that its contract applies and attempts to establish through its provisions that Claimant should be paid.

We find, based on the foregoing and the entire record, that Claimant organization has failed to present convincing evidence that past practice and representation rights are other than as recited by the carrier and the B.R.S. We, therefore have no alternative but to deny the claim.

Form 1  
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Award No. 8640  
Docket No. 8177-T  
2-MP-EW-'81

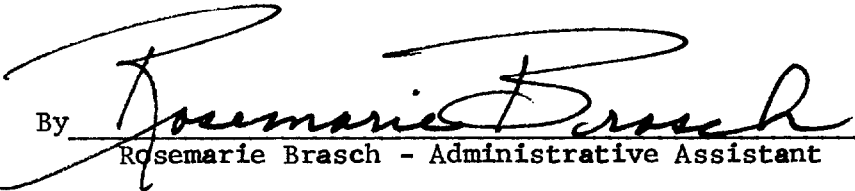
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of March, 1981.