

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc. violated the terms of the controlling Agreement, specifically Rule 27(a), when Division Superintendent Saylor did not notify in writing of the reasons for the disallowance of General Chairman Burrill's Claim, dated December 1, 1978, until postmarked letter of February 1, 1979; which is 62 days after date said claim was filed.
2. That under the terms of the controlling Agreement, the Burlington Northern, Inc. failed to compensate Stationary Engineers C. J. Davis, J. W. Johnson, Roger Kehn and Anita Howard, Alliance, Nebraska; in accordance with their classification, from October 9, 1978 until September 12, 1979.
3. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Stationary Engineers C. J. Davis, J. W. Johnson, Roger Kehn and Anita Howard, the difference in applicable Stationary Engineers' rate of pay and the rate paid by the Burlington Northern, Inc. during the aforementioned period.

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.

On December 1, 1978, the instant claim was mailed to the Carrier; and received by the Carrier's Superintendent on December 5, 1978. The Superintendent denied the claim by letter dated January 4, 1979; which letter did not set forth the reason for the declination as required by Rule 27(a). By letter dated January 10, 1979, the General Chairman rejected the declination, stating that Rule 27(a) required a declination to contain the reasons for disallowance. By letter dated January 31, 1979 and mailed February 1, 1979, the Superintendent amended his January 4, 1979 letter to contain a reason for the declination. The Organization contends that the Superintendent's letter mailed on February 1,

1979 was in violation of the time limits set forth in Rule 27(a), since it was mailed sixty-two days after the date the claim was filed.

Rule 27(a), states:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe 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." (emphasis added)

As set forth above, Rule 27(a) requires that the Carrier shall reply "... within sixty (60) days from the date same is filed..."

In Third Division Award No. 14695, it was stated:

"The National Disputes Committee Decision No. 16, dated March 17, 1965, incorporated into Award 13780, held that the claim should be considered 'filed' on the date received by the Carrier. Consequently, the date of receipt determines the 60 day time limit which commences to run from that date. Subsequently, Awards have held that the Carrier must stop running of the time limit by mailing or 'posting the notice required within the 60 days of the date that the claim was received.' (Award 11575 and Second Division 3656)." (Emphasis added)

Second Division Award No. 3656 focused on the Carrier's receipt of an appeal through the mails as the start of the sixty-day time limit. Second Division Award 7626 recognized that a Carrier complies with time limits provisions when it gives up control of a letter by dispatching it in the U.S. Mails or other method of communication authorized by the Organization within the time limits. In the instant case the claim was received by the Carrier's Superintendent on December 5, 1978 and the Carrier's supplemental reply was placed in the U.S. Mail on February 1, 1979, or the fifty-eighth day from the receipt of the Claim. We find therefore that the Carrier did deny the Claim within the time limits set forth in Rule 27(a).

The Organization set forth in its December 1, 1978 letter a claim on behalf of Claimants C. J. Davis, J. W. Johnson, Roger Kehn and Anita Howard at Alliance, Nebraska, for the difference between the current rate of \$7.13 per hour and of the rate which the Carrier was paying (\$6.35 per hour), for each hour of service performed as Stationary Engineers, since October 9, 1978 until the claim is settled. The Organization set forth its position in this letter

that the rates of pay on Bulletin Numbers 132, 133, 134 and 135 were incorrect; and that the title of the positions listed in the bulletins should be Stationary Engineer rather than "Heating Plant and Equipment Building Operator". The Organization stated that there is no position listed in the current Agreement as "Heating Plant and Equipment Building Operator". The Organization referred to the Stationary Engineer's duties set forth in Rule 25(c) of the Agreement and set forth the job duties of the jobs in question for comparison. The Carrier, in the Superintendent's January 31, 1979 letter, stated the reason for the declination as being that Rule 25(c) governs the operation of power plants, and the facility in question at Alliance Nebraska is not a power plant. The Carrier's highest designated appeals officer, by letter dated March 8, 1979, stated in part:

"The position of stationary engineer is listed in Rule 25 as a position falling under 'CLASS A - Steam Power Plants.' The heating plant is not a steam power plant. The plant supplies heat and air to the car and locomotive shops at Alliance. The heat supplied is hot water heat, not steam heat. Therefore, the plant does not require any Class A positions.

In any case, the attendants at the heating plant simply monitor the equipment, regulate fuel consumption and maintain consumption records. They do not correct or repair the equipment. Any malfunctions are reported to the Maintenance Supervisor for appropriate handling. None of the functions performed by the attendants require a stationary engineer according to Rule 25(c)." (Emphasis added)

The Organization's General Chairman responded by letter dated June 18, 1979, stating in part:

"Your assertion that the 'heating plant is not a steam power plant' is totally erroneous and absurd. We recently visited the new Alliance facility and found that the 'hot water heat' referred to in your letter was actually steam heat. The 'hot water' referred to in your letter was heated to 210 degrees F, under pressure; at which conditions water does not remain as a liquid. In any case, it appears the Carrier has contrived this loop-hole to avoid compensating the Claimants at the correct rate.

The rate currently being paid the Stationary Engineers is not a rate negotiated between the parties. The description of duties of the 'Heating Plant and Equipment Building Operator' are remarkably similar to the duties of a Stationary Engineer. Stationary Engineers perform these duties at other points and the Claimants should be compensated as such. The Claim is supported by Rule 25(c) and Appendix A of the current Agreement."

The Carrier responded by letter dated June 19, 1979, reiterating that the power plant is not a steam power plant and that none of the bulletined duties of the position required that a Stationary Engineer be assigned.

The Carrier rebulletined the positions as Stationary Engineer positions in Bulletin 191 dated July 12, 1979 and Bulletins Numbers 201, 202 and 203 dated August 9, 1979. The description of duties contained in the rebulletined positions was identical to the description of the originally bulletined Heating Plant and Equipment Building Operator duties. Such is set forth below:

"Heating Plant and Equipment Bldg. Operator duties:

Operate new facility boilers and utility plant, which consists of burners, coal stokers, boiler controls and boiler plant machinery including pumps, conveyors, air compressors, water softeners, deionization equipment, etc. Will be responsible for regulating fuel consumption sufficiently for safe and efficient operation of burners to maintain adequate heat in the new facility.

Must maintain records of fuel, water, and chemical consumption together with combustion rate records. Must perform all other laborers duties."

In the Carrier's letter of September 24, 1979, the Carrier stated that the reason for rebulletining the positions was that the three coal fired boilers were scheduled to be placed into operation, whereby repairs and corrections of equipment would be necessary and thus a Stationary Engineer required. The Organization's General Chairman stated in his letter of November 5, 1979 that he visited the facility on October 10, 1979 and found that coal fired boilers were not in service at that time; and that such were not going to be coal fired until after the first of January.

By letter dated November 19, 1979, the Carrier, after over a year of correspondence concerning the matter, stated for the first time the assertion that the duties performed by the Claimants since October 9, 1978 were those of Stationary Firemen; and that they were properly paid the Stationary Fireman's rate of \$6.35 per hour.

Other than the assertion stated above, the Carrier did not develop the position in regards to Stationary Firemen on the property. And it is evident to this Board that the duties of a Stationary Fireman as set forth in Rule 25(d) of the Agreement do not include reference to "pumps, conveyors, air compressors, water softeners, deionization equipment, etc...." as advertised in the original "Heating Plant and Equipment Building Operator" position duties. Nor does Rule 25(d) indicate that Stationary Firemen are responsible to "maintain records of fuel, water, and chemical consumption together with combustion rate records."

This Board may focus only on the factual record developed on the property. We have considered all of the evidence of record developed by the parties on

the property and find that the Organization has developed sufficient facts to support the position that the Claimants were assigned Stationary Engineers duties by bulletins 132, 133, 134 and 135. We find that the record shows that the heating plant is a steam power plant; and the record discloses that the description of duties for the rebulletined positions, which the Carrier recognizes to be Stationary Engineer positions, are identical to the description of duties set forth in the original bulletins. We are compelled to reject all of the contentions in the Carrier's Submission not raised on the property. We shall sustain this claim. However, since the claim is for the difference in the rate of pay actually paid the Claimants while working on the positions in question and the higher Stationary Engineers' rate of pay, the Carrier may search its pay records for each Claimant starting on October 9, 1978 and calculate the total number of hours actually worked by each Claimant on the positions in question under the incorrect rate of pay and make each individual Claimant whole for the difference in the proper Stationary Engineers' rate of pay and the rate actually paid during this period.

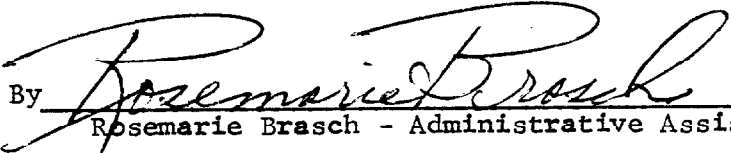
A W A R D

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.