

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

(Brotherhood Railway Carmen of the United States  
( and Canada  
Parties to Dispute: (  
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, Rule 144 1/2, when on the date of February 13, 1983, they arbitrarily allowed train crew to perform Carmens' contractually provided for work of inspecting, terminal air testing, etc., and in so doing, deprived, claimant herein, Carman Carl Edwards of work to which entitled.

2. That Carrier violated the provisions of Rule 33 of the controlling agreement with regard to their handling of the instant claim on the property.

3. That accordingly, Carrier be ordered to compensate Claimant herein for all time lost as a result of the above referred to violations; two (2) hours pay at the time and one-half rate: (equivalent to call time and/or four (4) hours at the straight time rate of pay.)

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 employees involved in this dispute are respectively carrier and employees 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.

Pursuant to Section 3, First (j) of the Railway Labor Act, as amended, notice was given to the United Transportation Union as a possible party of interest. However, that Organization chose not to intervene in this matter.

In this dispute, the Organization has advanced its Claim on procedural and substantive grounds. With respect to the former, it asserts that the Carrier's decisional letter denying the initial Claim was not timely filed in accordance with the provisions of Rule 33 of the Controlling Agreement.

Turning first to the procedural contention of the Organization, the record sets forth a Claim letter from the Claimant, dated April 23, 1983. It also includes a letter from the Claimant dated April 12, 1983, in which he stated that he wished to correct the Claim date to read March 23, 1983, rather than April 23. Moreover, in this letter, he also advised the Carrier that he would "rewrite the time claim in order to stay in the time frame." He did this by essentially repeating what he had earlier claimed in the letter that was incorrectly dated April 23. The Claim date was also amended to April 12, 1983.

The record subsequently reveals an undated letter from the Carrier to the Organization in which it denied the Claim of April 12, 1983. It is this undated letter which the Organization cites as a foundation for its procedural assertions that the Carrier "failed to respond to the instant claim within the contractually provided for sixty (60) day time limit." The record does not establish when the Organization received the undated letter.

The Carrier's defense is that, while the letter which initially denied the claim was undated, the Labor Relations Department received its copy of that letter on May 25, 1983, as evidenced by the receipt stamp in the upper right hand corner of that document.

Although we abide by the self-evident rule that contractual procedural requirements are to govern both parties, the failure to date a letter, depending on the circumstances, is not absolute proof that a letter was not dispatched in a timely manner. Given the circumstances here, the Board finds that the Carrier's letter of denial to the initial Claim was sent on or before May 25, 1983, a date which is within the 60-day time frame established by the Controlling Rule.

Turning to the merits, there is no dispute as to the relevant facts on which the Claim is based. On February 13, 1983, a Sunday, a train arrived at the Washington, Indiana Yard. There were no Carmen on duty that day. The train crew made up its train, performed the air test and departed from the Yard.

Essentially, what is at issue is the making of air tests during a period when there was no Car Inspector on duty. Under the circumstances, the question is whether that work belongs exclusively to the Carmen craft. Numerous Awards, under similar conditions, have held that this work can be performed by Trainmen and Carmen. We have no basis, on the record before us, to not observe these past decisions and the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of August 1986.