

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 11617
Docket No. 11138-T
88-2-85-2-278

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

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen of the United States and Canada
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carmen A. Shank, B. Mussman, M. Wood, M. Blankenship, R. Thomas, J. Grice, B. Philippe, S. Foster, D. Walker, S. Boyd, T. Ligas, M. Frommelt, B. Miller and P. Haworth were deprived of work and wages to which entitled when the Chicago and North Western Transportation Company violated the controlling agreement when it improperly assigned train crews to perform carmen's work of coupling air hoses and making terminal air brake test on June 4, 5, 10, 11, 15, 16, 17, 18, 19 and 23, 1984 and July 3 and 7, 1984.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen Claimants as follows:

A. Shank	June 4 and July 7, 1984
B. Mussman	June 5, 1984
M. Wood	June 6, 1984
M. Blankenship	June 11, 1984
R. Thomas	June 15 and July 3, 1984
J. Grice	June 15, 1984
B. Philippe	June 16, 1984
S. Foster	June 16, 1984
D. Walker	June 17, 1984
S. Boyd	June 17, 1984
T. Ligas	June 18, 1984
M. Frommelt	June 18, 1984
B. Miller	June 19, 1984
P. Haworth	June 23, 1984

Claim is made for two (2) hours and forty (40) minutes at the time and one-half rate of pay for the above listed dates.

3. The Chicago and North Western Transportation Company failed to comply with Rule 29(a) of the current Agreement when the Assistant Vice President and Division Manager failed to respond to the Local Chairman's claim dated July 16, 1984.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee 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.

As Third Party in Interest the United Transportation Union was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

As a threshold issue, the Organization contends that the instant claim is required, under Rule 29(a), to be sustained. Rule 29(a), in relevant part, provides:

"All claims or grievances must be presented in writing by or on behalf of the employee 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 employee 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."

By letter dated July 16, 1984, the Local Chairman informed the Assistant Vice President and Division Manager of the Carrier, of the instant claim. In a letter dated August 16, 1984, the Assistant Division Manager denied the claim.

The Organization asserts that as the designated officer of the Carrier, the Assistant Vice President, rather than the Assistant Division Manager, was required to respond to the Organization's claim within the time limits specified in Rule 29(a). Since the Assistant Vice President failed to do so, within sixty (60) days of the filing of the claim, the Organization contends that pursuant to Rule 29(a) "the claim or grievance shall be allowed as presented."

After carefully examining the terms of Rule 29(a), the Board has concluded that the Organization's position must be rejected. The claim was timely presented in writing "on behalf of the employee involved" to the Assistant Vice President. Rule 29(a) then sets forth that should the claim "be disallowed" the Carrier is required to give written notification to whoever filed the claim of the reasons for "such disallowance." The Assistant Division Manager provided the required notification under Rule 29(a).

There is no requirement that the Assistant Vice President who was authorized to receive the claim of the Organization is required under Rule 29(a) to reply to the claim. Rule 29(a) clearly sets forth that within sixty (60) days of the filing of the claim "the carrier," is required to provide a written reply to the claim within sixty (60) days stating the reasons for "such disallowance." To sustain the Organization's position, Rule 29(a) would have to indicate that "the officer of the carrier authorized to receive the claim," rather than "the carrier" is required to reply to the claim. Obviously, the Assistant Division Manager's reply constitutes the required notification requirement from the Carrier. Second Division Award No. 5312; Public Law Board No. 2512, Award No. 81. Accordingly, there is no support in the record, that the instant claim is to be allowed as presented.

Turning to the merits, the reasoning and decision contained in Second Division Award 11295 applies to the instant dispute.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of January 1989.