

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rules 32 and 122 as amended, and Ruling 19 when persons other than Electrician (Foremen) performed Electricians' work, i.e., 1. Assembling, dismantling, inspecting, testing, adjusting, repairing and maintaining electrical equipment and servicing beginning February 12, 1990, and continuing until violation is stopped at Hinkle, Oregon.

2. That the Union Pacific Railroad Company is violative of Rule 35 of the controlling agreement effective November 1, 1976, when they failed to timely respond within the required 60 days to claim filed February 12, 1990, and subsequent claim filed May 29, 1990, and further violated Rule 35 when they did not allow the claim as presented as prescribed in said Rule.

3. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electricians R. H. Gilbert, T. C. McDowell, R. E. Sage, R. E. Robertson, H. F. McClenahan, M. F. Clary, W. B. Sheller, V. L. Houser up to resignation August 6, 1990, G. P. King beginning August 6, 1990, and T. J. Heihn beginning December 31, 1990, in the amount of two hours and forty minutes pay at the time and one half rate of pay paid each day until the practice is stopped or claim is resolved. Claimants have all suffered a loss of work opportunity.

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 employes 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 American Railway and Airway Supervisors Association was advised of the pendency of this dispute, but chose not to intervene.

On February 12, 1990, the Organization sent its initial Claim in this dispute to the Director of Field Maintenance-Locomotive ("Director") located in Salt Lake City, Utah. Because it did not receive a response to its letter, the Organization sent another letter to the Director, dated May 29, 1990, which essentially contained the same Claim as the February 12, 1990 Claim. The letter also asserted that because its February 12, 1990 Claim had not been answered within 60 days, the Carrier had violated Rule 35. On June 16, 1990, the Director responded to the May 29 Claim asserting that he had not received the initial Claim and, therefore, "The claim for violation of Rule Number 35, dated May 29, 1990, is procedurally defective account notification of appeal, dated February 12 was not received."

On July 2, 1990, the Organization provided a copy of "Receipt for Certified Mail" signed by Mr. J. Stenquist who it asserts was an agent of the Carrier, and, therefore, the Organization contends that the Carrier's technical defense must fail.

The Board finds, from our review of the evidence, that the initial Claim was received by the Carrier, as contended by the Organization. The Carrier's further contention that the Claim must be dismissed because the initial Claim was invalid may be an arguable point. However, any fair reading of the February 12 letter leads to the conclusion that it was a Claim. If one were to follow the Carrier's rationale, its defense would improperly serve to justify time limit failures. The Carrier must respond to a Claim in a timely manner or suffer the consequences. Therefore, this appeal is sustained because the Carrier did not respond in a timely fashion to the Organization's Claim dated February 12, 1990.

With respect to the amount of damages, the initial Claim dated February 12, 1990, did lack a degree of specificity and it was continuously amended as it was progressed on the property. Had there not been a time limit violation, the Carrier's contention that the Claim must be disallowed because it is not the same Claim filed by the Organization on the property would have been sustained. However, because we sustained the appeal because of the time limit violation, damages are required. We find that the time set forth in the initial Claim (2 hours and forty minutes pay for one electrician) is a reasonable settlement. The period of liability ceases on September 12, 1990 when the Carrier denied the Claim. (See, among other Awards, Second Division Awards 11621, 11187 and 10754).

A W A R D


Claim sustained in accordance with the Findings.

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Award No. 12384
Docket No. 12341-T
92-2-91-2-130

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1992.