

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12530  
Docket No. 12493  
93-2-92-2-11

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

(International Brotherhood of Electrical  
Workers  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc., (formerly Louisville  
(and Nashville Railroad Company

STATEMENT OF CLAIM:

1. "That the CSX Transportation, Inc., (formerly Louisville and Nashville Railroad Company) violated Article V of the August 21, 1954 amendment to the working agreement, which requires Carrier to deny claim within sixty (60) days or allow claim as presented.
2. That the CSX Transportation, Inc. (formerly Louisville and Nashville Railroad Company) further violated, but not limited to, Rule 19 of the working agreement effective September 1, 1943, as amended, when the Carrier failed to compensate Electrician R. B. Thompson the correct wage while working as a temporary foreman for forty-six (46) days during the period of October 27, 1989 thru January 1, 1990.
3. That the CSX Transportation, Inc. (formerly Louisville and Nashville Railroad Company) be ordered to compensate Electrician R. B. Thompson the difference of \$33.36 per day for the forty-six (46) days worked as a temporary foreman."

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.

The Claimant worked in the capacity of temporary Foreman during the period from October 27, 1989 through January 1, 1990. On January 8, 1990, he filed a claim with the Carrier's General Plant Manager. The claim, in pertinent part, sought the difference between what the Claimant has identified as "code 700 pay" and the minimum amount that has ever been paid to a permanent Foreman. He claims that there is a difference of \$33.36 per day. In pursuing his claim, the Claimant relied upon Rule 19(c) which reads:

"Should an employee be assigned temporarily to fill the place of a foreman, the established rate for the position, and the rules and working conditions that are attached thereto, will apply during such temporary assignment."

The Carrier did not respond to the claim within sixty days as required by Article V, Section 1(a) of the August 21, 1954 Agreement. Therefore, the Organization submits "the claim or grievance shall be allowed as presented."

We note that the Carrier has advanced certain arguments to this Board that were not made during the handling of this dispute on the property. Therefore, these were not considered in our deliberations.


The Carrier's contention that it did not respond to the Claimant's written claim because the Plant Manager thought the matter had been resolved to the Claimant's satisfaction is not substantiated by the evidence. We conclude that the claim must be sustained on the grounds that the Carrier defaulted by not timely denying the claim which had been filed with the designated Carrier officer on January 8, 1990. This decision is based solely upon the procedural violations by the Carrier and no opinion is expressed on the merits of the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Secretary to the Board

Dated at Chicago, Illinois, this 28th day of April 1993.