

Award No. 10313

Docket No. SG-9706

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it failed to provide proper relief for the position assigned to J. J. Lorber, Signal Maintainer at Buffalo Center, Iowa.

(b) The Carrier now pay D. T. Schwartz, Signal Maintainer at Davenport, Iowa, at the punitive rate for the following time he was required to perform work on the Buffalo Center, Iowa, territory account J. J. Lorber being on vacation; March 12, 1956, 6 hours; March 16, 1956, 6 hours; March 18, 1956, 2-8/12 hours; March 19, 1956, 8 hours; March 20, 1956, 6 hours; March 21, 1956, 10 hours; March 22, 1956, 6 hours; April 2, 1956, 8 hours; April 3, 1956, 5 hours.

(c) The Carrier now pay Signal Maintainer G. C. Olinger, at Muscatine, Iowa, at the punitive rate for the following time he was required to perform work on the Buffalo Center, Iowa, territory account J. J. Lorber being on vacation; March 29, 1956, 7 hours; March 30, 1956, 4 hours; March 31, 1956, 3-8/12 hours.

(d) The Carrier now pay H. S. Carson, Signal Maintainer at Moline, Ill., at the punitive rate for the following time that he was required to perform work on the Buffalo Center, Iowa, territory account J. J. Lorber being on vacation; April 1, 1956, 2-8/12 hours.

(e) The Carrier now pay J. J. Lorber, Signal Maintainer at Buffalo Center, Iowa, at the punitive rate for the following time that he was required to perform work that had accumulated during his absence and should have been performed had the Carrier furnished proper relief: April 2, 1956, 8 hours; April 3, 1956, 5 hours. (Carrier's File: L-130-59)

EMPLOYEES' STATEMENT OF FACTS: Mr. J. J. Lorber is employed as Signal Maintainer with the Carrier with headquarters at Buffalo Center, Iowa. He was assigned a vacation for the period March 12 to March 30, 1956, inclusive, and received his vacation as assigned. The Carrier did not assign

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: This dispute involves a question concerning the interpretation of the vacation agreement. Both the Carrier and the Organization have argued this case before this Division on the merits.

However, in addition, the Organization has contended that this dispute is governed, regardless of the merits, by Article V, Section 1(a) of the August 21, 1954 National Agreement which is applicable to both parties. This Article provides in part:

"1. All Claims or grievances arising on or after January 1, 1955 shall be handled as follows:

(a) 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 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 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 a 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 ours.)

The record shows that the letter of denial of the claim was worded as follows:

"Your letter of May 8, 1956, File RI V-25 claiming penalty and regular time for D. T. Schwartz, H. S. Carson and Geo. Olinger account assigned vacation of J. J. Lorber.

"This is to advise you that these claims are hereby declined."

It is the Organization's contention that in light of the fact that all that the Carrier stated was that "these claims are hereby denied" that there was a breach of the agreement and that because of this claims must be sustained as Article V, Section 1(a) provides that reasons shall be given for disallowance. The Article also provides "If not so notified, the claim or grievance shall be allowed as presented."

The Carrier did not address itself to this contention of the Organization in either its ex parte submission nor at the time of the oral hearing before the Board. However, in its rebuttal statement it raised for the first time the contention that the Organization was also in violation of Article 5 (b) in that they had not properly processed an appeal from the original denial. Whether this point has merit or not will not be decided by this Division because in numerous decisions we have held that we will not consider new matter not discussed on the property unless it goes to the jurisdiction of the Board. This is not jurisdictional.

In light of the above, it is the judgment of this Board that the Carrier did violate the clear language of the 1954 National Agreement when it failed to give any reason for the denial of the claim. See Awards 9205, 9253, 9492 among others. This being so there is no necessity to consider the case on its merits.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein and

That the Agreement has been violated.

AWARD

Claim sustained

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.