



Award No. 14426
Docket No. SG-12268

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated Article V of the August 21, 1954 Agreement, when Superintendent R. B. Jones failed to give any reasons for denying the claim filed in behalf of Signal Maintainer M. W. Pressnell for the difference in pay of Signal Maintainer and that of Assistant Foreman for 80 hours' time from December 18, 1958, to December 31, 1958, during which time the Assistant Foreman position at Boyles Yard, Alabama, was filled by two junior men. Therefore, in view of such failure and in accordance with the provisions of Article V this claim should be allowed as presented. [Carrier's File G-304, G-304.]

EMPLOYEES' STATEMENT OF FACTS: On January 28, 1959, Local Chairman P. E. Brock filed a claim with Mr. W. H. Ray, Signal Supervisor, in behalf of Signal Maintainer M. W. Pressnell for the difference in the rate of pay of a Signalman and that of an Assistant Foreman (12 cents per hour) for the period of time from December 18, 1958, through December 31, 1958, account the Carrier assigning junior employees to fill an Assistant Foreman position. The claim read as follows:

"The local committee has been directed to present this claim in behalf of Bro. M. W. Pressnell for the difference in rate of pay of signalman and Assistant Foreman of 12 cents an hour for 80 hours from December 18, 1958 through December 31, 1958. This job being filled by two junior men H. L. Wyatt and N. E. Todd.

Rule No. 48 of the agreement.

Filling of temporary vacancies when there are no furloughed or men reduced to a lower class, employees will notify the Signal Supervisor in writing of their desire to work on temporary vacancies in higher classes. M. Pressnell complied with these rules although you stated it is not feasible to use regular assigned maintainer to perform relief work.

This case was discussed during conference in this office December 4, at which time it was explained to you that the signal supervisor in his letter of February 19 to the local chairman stated explicitly his reasons for declining the claim; that when the claim was appealed to the superintendent, he considered the facts and reviewed the file, including the supervisor's letter of February 19 and concurred in the position taken by the supervisor.

In the circumstances, we do not consider that there is any proper basis for the claim and same is respectfully declined.

Yours truly,

/s/ W. S. Scholl
Director of Personnel."

OPINION OF BOARD: The parties are in agreement that the only question before this Board is: Did the Carrier comply with Article V of the August 21, 1954 Agreement when on March 10, 1959, Superintendent Jones declined the subject claim with these words:

"I have carefully reviewed the papers in this claim and it is respectfully declined."

Carrier points to an earlier communication from the local Signal Supervisor to the local Organization Chairman included in "the papers in this claim" in which the Signal Supervisor gave his reason in writing for disallowing the grievance. Carrier then urges that this communication read with Supervisor Jones' declination satisfies Article V.

The pertinent portions of Article V are:

"(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 grievance (the employe 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.

* * * * *

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes . . ." (Emphasis ours.)

The Organization contends that the Agreement is clear as to the requirement of reasons for disallowance in writing within 60 days according to paragraph (a) and that this requirement is in effect at the subject level of appeal according to terms of paragraph (c). This Board agrees with this contention.

The terms of Article V are mandatory and the words of Superintendent Jones cannot qualify as reasons for disallowance. See Awards 9253 (Weston), 9492 (Rose), 9554 (Bernstein), 10759 (McGrath), Docket No. 15, SBA No. 287 (Lynch). Therefore the claim shall be allowed as presented.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 was violated.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1966.