



Award No. 14436
Docket No. MW-11843

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier's handling of the bulletin covering the vacancy of a First Class Steel Bridgeman on its System Steel Bridge gang was improper and in violation of the effective Agreement and, as a consequence thereof:

(2) The senior furloughed Bridge and Building Mechanic having experience as Steel Bridgeman be paid for all time lost beginning December 10, 1958 and continuing until the violation referred to in Part (1) of this claim is corrected.

EMPLOYES' STATEMENT OF FACTS: The factual situation involved here is set forth in the letter of claim presentation which reads:

"Bulletins-S. T.
May 15, 1959

Mr. T. S. Carter
Chief Engineer
M-K-T Lines
Dallas 2, Texas

Dear Sir:

Under date of May 1, 1959, I wrote Mr. E. P. Kennedy the following letter:

Dear Sir:

Under date of May 1, 1959, I wrote Mr. E. P. Kennedy the following letter:

On May 15, 1959, General Chairman Jones presented claim to Chief Engineer T. S. Carter (Carrier's Exhibit A, Sheets 3, 4 and 5) on behalf of certain unnamed and unidentified persons, described by him in the following language on Page 3 of his letter:

" . . . kindly accept this as our claim for B&B personnel beginning with the senior furloughed Bridge and Building employe and ending with the Junior Bridge and Building employe who were not furnished a copy of your your Circular No. 295 (should have been Bulletin No. 295) from the date of the vacancy until Rules 4 and 5 of Article 5 are complied with."

After declination of this claim by Chief Engineer T. S. Carter on June 16, 1959 (Carrier's Exhibit A, Sheet 6), General Chairman Jones on July 7, 1959, appealed from Mr. Carter's decision to the undersigned (Carrier's Exhibit A, Sheets 7 through 25, incl.) but restricted his appeal to an appeal on behalf of one man, i.e.,

" . . . the senior furloughed Bridge and Building Department Mechanic having experience as Steel Bridgeman . . ."

The undersigned highest operating officer of the Carrier designated to handle claims declined this alleged claim on July 23, 1959 (Carrier's Exhibit A, Sheets 26, 27 and 28); it was discussed in conference on January 12, 1960, and Carrier's declination affirmed under dates of January 12, 1960 (Carrier's Exhibit A, Sheet 30) and January 20, 1960 (Carrier's Exhibit A, Sheets 39, 40, 41 and 42).

A photocopy reproduction of all correspondence exchanged during the handling of this alleged claim on the property is attached as Carrier's Exhibit A.

The controlling Agreement, No. DP-173, effective September 1, 1949, and the National Agreement of August 21, 1954, to which both the Carrier and the Brotherhood of Maintenance of Way Employes are parties, are on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization bases its claim herein of violation of the Agreement on "The Carrier's handling of the bulletin covering the vacancy of a First Class Steel Bridgeman . . ." It alleges that such handling was improper in two aspects: the failure to bulletin within five days a vacancy which occurred on December 10, 1958, and the failure to make proper distribution of the said Bulletin when issued on January 7, 1959.

Claim was first made to the Carrier by letter dated May 15, 1959, more than three months after the last "handling" of the subject Bulletin by Carrier. Carrier contends that the claim was thus not timely raised according to the provisions of Section 1(a), Article V of the August 21, 1954 National Agreement and is barred under that 60-day time limit provision on raising claims.

Carrier raised this issued of non-compliance with Article V on the property at the proper time and may thus reassert it here.

The claim is dismissed for failure to comply with the Time Limit Rule above set out. See Awards 14355 (Ives), 14368 (Lynch), 14131 (Schmertz), 12984 (Coburn), 12045 (Engelstein).

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 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 Claim is barred.

AWARD

Claim dismissed.

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.