



Award No. 15529
Docket No. MW-16047

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Mr. M. P. Ferguson at the on-track mower operator's rate of pay for the period beginning May 29 and ending June 26, 1964. (System Case No. 340 MofW.)

(2) The claim as appealed to Superintendent T. J. Casey in appeal letter dated September 23, 1964 should be allowed as presented because Superintendent Casey failed to notify Local Chairman Daigre in writing of any reasons for the Superintendent's disallowance of the claim.

(3) The claim as presented in behalf of Mr. M. P. Ferguson "for the difference between the rate he was paid, \$2.273 per hour, and that of on-track mower operator, \$2.463 per hour, for a total of twenty (20) days starting May 29th and ending June 26, 1964" be paid because of the violation referred to in Part (1) of this claim and because of the Superintendent's failure to give reasons for disallowance of the claim (Sections (a) and (c) of Rule 26).

EMPLOYEES' STATEMENT OF FACTS: The instant claim was initially presented to Division Engineer R. L. Harwood in a letter reading:

LETTER NO. 1

"July 25, 1964

Mr. R. L. Harwood
Division Engineer
I.C.R.R. Co. Box 191
Vicksburg, Mississippi

Dear Sir:

Claim is presented in favor of claimant M. P. Ferguson, Group 4 machine operator, and that the claimant be paid the proper rate for on track mowing machine on the following dates May 29, 1964, June 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, and 26, 1964.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

PRELIMINARY STATEMENT

On June 1, 2, 3, 4, 5, 10, 11, 12, 15 and 16, 1964 the claimant, M. P. Ferguson, a section laborer, Mississippi Division, was utilized to operate a motor car towing an on-track mowing machine. He was compensated for the service performed at the rate of \$2.273 per hour.

The union contends that the claimant was entitled to the higher rate of "head operator" of an on-track mowing machine for all the days beginning May 29, and ending June 26, 1964. In addition, they allege the company failed to give reasons for the disallowance of the claim on appeal to the superintendent and it therefore should be allowed as presented.

In its submission the company will show:

A) The claim was handled in full compliance with the provisions of the time limit rule.

B) The claimant was compensated on each of the ten days he was used, at a rate applicable to motor car operator.

C) There is no evidence in the record to substantiate that there has been a breach of the contract.

CARRIER'S STATEMENT OF FACTS: Claimant M. P. Ferguson holds seniority as a section laborer in Gang 21, Mississippi Division, with a seniority date of February 1, 1956. On ten days, June 1, 2, 3, 4, 5, 10, 11, 12, 15 and 16, 1964, the company assigned him to operate a motor car towing an on-track mowing machine under the supervision and direction of a section foreman. The claimant had not filed the proper application for operating the motor car, as required under the provisions of Rule 21(c) of the effective agreement; however, he was compensated for service performed at the rate applicable to motor car operator.

The union states that the claim period was from May 29, 1964 through June 26, 1964, excluding rest days. The company however, took exception to the dates claimed on the basis the machine was not operated on his seniority district subsequent to June 16, 1964.

The agreement in effect between the parties to this dispute dated June 1, 1962, is by reference made a part of this statement of fact.

OPINION OF BOARD: The only issue before the Board in this case is whether or not Carrier properly denied the claim under the provisions of Article V of the August 21, 1954 Agreement. Article V has been incorporated into the effective Agreement as Rule 26. Rule 26 reads in part as follows:

"RULE 26.

(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 duly accredited 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. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

The issue of proper denial arose when Superintendent Casey denied the claim with the following quote from his letter of September 30, 1964.

"There is clearly a difference of opinion in the interpretation of working agreement in this instance. It would be my suggestion that this case be forwarded to the General Chairman for further handling. I do not think it can be adjusted locally.

For the purpose of record, the claim must be declined."

This constituted a general denial of the claim. The Organization contended the Agreement had been violated and the Carrier stated the Agreement had not been violated. It was not necessary for the Carrier to set out, in detailed language, the reason for denial.

We believe that the Carrier satisfied the requirements of Rule 26 and will deny the claim.

See Awards 14864 (Ives) and 15143 (Hamilton).

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 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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1967.