



Award No. 16002

Docket No. MW-14589

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The claim presented in behalf of Section Laborer F. D. Magnetta by General Chairman J. G. James in his letter of July 30, 1962 to Roadmaster C. E. Fox should have been allowed, as presented, because said claim was not disallowed as required by or in conformance with Sections 1(a) and (c) of Article V of the August 21, 1954 Agreement. (Carrier's Case D-1406-A.)

(2) The Carrier be required and ordered to allow the claim presented in the aforementioned letter of July 30, 1962, namely, that Section Laborer F. D. Magnetta be allowed payment for a call (two (2) hours and forty (40) minutes at his time and one-half rate) for the dates of June 2, 3, 9, 10, 16, 17, 23, 24, 30 and July 1, 4, 7, 8, 14, 15, 21 and 22, 1962, and for each Saturday, Sunday and holiday subsequent to July 22, 1962 that the claimant is deprived of the right to service cabooses.

EMPLOYES' STATEMENT OF FACTS: Claim was initially filed in a letter reading:

[LETTER 1.]

"July 30, 1962

Mr. C. E. Fox, Roadmaster
CMStP&P Railroad
302 Rea Building
Terre Haute, Ind.

Dear Sir:

Please accept this as a formal claim for a call of 2 hours and 40 minutes at penalty rate for the following Saturdays, Sundays and

At Austin, Minnesota, caboose servicing duties are performed by employees within the scope of the Carmen's Agreement.

At Mason City, Iowa, caboose servicing duties are performed both by employees within the scope of the Maintenance of Way Agreement and by employees within the scope of the Carman's Agreement.'

Under the circumstances I cannot agree that there is agreement basis for the claim which you have presented and I must necessarily advise you therefore that the claims are respectfully declined.

Yours very truly,

/s/ S. W. Amour
Assistant to
Vice President"

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The instant claim is entirely devoid of merit and this is evidenced by the fact that the employees have progressed this claim to your Board strictly under the provisions of Article V of the Agreement of August 21, 1954 (Time Limit on Claims Rule).

Inasmuch as the instant claim is devoid of merit or, in other words, inasmuch as the instant claim is an invalid claim, the provisions of Article V of the Agreement of August 21, 1954 are not applicable to the instant claim because Board Awards have held that the provisions of Article V are inapplicable until or unless a valid claim is filed or, in other words, the provisions of Article V do not apply to invalid claims, therefore, the instant invalid claim must be dismissed in its entirety.

There is attached as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman, under date of March 8, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: The case is here strictly on a time limit question under Article V of the Agreement.

The record shows that the claim was presented to the Roadmaster in a letter dated 30 July, 1962, and it was not until 9 November, 1962, that the Roadmaster disallowed it. Since the denial of the claim was not timely, it is payable under Article V, to the date of the late disallowance, 9 November, 1962. See National Disputes Committee Decision No. 16; Award 13780; as well as Awards 14369, 15050, 15069, 15223, 15448 and 15933.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1967.