

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19351  
Docket Number MW-19328

Joseph E. Cole, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(J. F. Nash and R. C. Haldeman, Trustees of the Property of  
( Lehigh Valley Railroad Company, Debtor

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

(1) The claims \* as presented by Messrs. I. F. Hufsmith, G. S. Weston, R. E. Seip, H. Woeppele, Jr., L. Marsteller, H. Snyder, E. Woronowicz and A. Hnatishion on January 15, 1969 to B&B Supervisor H. R. Dallery should be allowed, as presented, because of Mr. Dallery's untimely decision of disallowance.

(\*) The claims were presented as follows:

B & B Shop, Foot of Iron St.  
Easton, Pa.  
January 15, 1969

Mr. H. R. Dallery, Supv. B&B Dept.  
91 Bay Ave.  
Newark, N. J. 07105

Dear Sir:

Claim for all time made by M of E Shop Forces, Packerton Shop under General Foreman R. Remaley working at Packerton, Pa. - Old Storehouse Building & Garage, Packerton, Pa. during December 26th & December 31, 1968, when they performed the following work: Running and connecting fuel oil line to dravo heater in garage east of storehouse, Packerton, Pa. We the undersigned are claiming two (2) days 16 hours each for the above work.

Very truly yours,

/s/ George S. Weston  
/s/ Ira E. Hufsmith  
Plumbers  
So. Easton, Pa."

cc: B. Helfrich  
Vice Charman

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"B & B Shop, Foot of Iron St.  
Easton, Pa.  
January 15, 1969

Mr. H. R. Dallery, Supv. B&B Dept.  
91 Bay Ave.  
Newark, N.J. 07105

Dear Sir:

Claim for all time made by M of E Shop Forces, Packerton Shop under General Foreman R. Remaley working at Packerton, Pa. - Old Storehouse Building & Garage, Packerton, Pa. during December 26th and December 31, 1968 when they performed the following work: Disconnected dravo heater & stove pipe in storehouse building & moved heater to garage east of storehouse and set heater up, cut hole in metal roof, connected stove pipe and etc.

Very truly yours,

See Attached sheet

cc: B. Helfrich  
Vice Chairman"

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"We the undersigned are claiming two (2) days each 16 hours for the above work.

/s/ 1. Russell E. Seip  
/s/ 2. Harry Woepole, Jr.  
/s/ 3. Lloyd Marsteller  
/s/ 4. Harold Snyder  
/s/ 5. Edward Woronowicz  
/s/ 6. Alex Hnatishion"

OPINION OF BOARD: On January 15, 1969, Claimants, one plumber foreman and one plumber; one B&B foreman and five carpenters submitted claims to B&B Supervisor Dallery for sixteen (16) hours each account certain work having been performed by Carrier's M&E Shop Forces at Carrier's Old Storehouse Building and Garage, Packerton, Pennsylvania, during December 26 and December 31, 1968.

Petitioner claims that Carrier failed, "within 60 days from the date" the claim was filed, to notify petitioner "in writing of the reasons for such disallowance." Petitioner claims that this constitutes a failure to comply with the mandatory provisions of Article V, 1(a) of the National Agreement of August 21, 1954 and, again referring to Article V, 1(a), the claim "shall be allowed as presented." If the petitioner's claim in this request is well founded, this Board, by mandate of Article V, 1(a), must allow the claim, as presented, without consideration of the merits.

Under date of January 20, 1969, B&B Supervisor Dallery acknowledged receipt of claim of B&B crew and advised; "I have this date written the Master Mechanic, Mr. Picone, and as soon as a reply is received, I will render a decision." The record fails to show a reply to the plumber Claimants' claim of January 15, 1969.

On March 19, 1969, both plumber and carpenter Claimants, separately addressed communication to Carrier, advising that Mr. Dallery had not replied and properly denied claim within time limit provided and requested payment of sixteen hours each.

Thus, the record stands uncontroverted that B&B Supervisor Dallery did not notify Claimants "in writing", within sixty (60) days from date claims were filed, "the reasons for such disallowance" as required by Article V, 1(a) of the National Agreement of August 21, 1954.

Such being the facts we are compelled by Article V, 1(a) to sustain the claims "as presented." (NDC Decision 16, Awards 11374, 16564, among many)

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 Carrier violated Article V, 1(a) of the August 21, 1954 National Agreement and the claims must be allowed as presented.

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Claims sustained as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Kellum  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.