

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21755
Docket Number MW-21503

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Chicago and Eastern Illinois Railroad Company

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

(1) The dismissal of Extra Gang Foreman Glen C. Dodson was without just and sufficient cause.

(2) The claim as presented shall be allowed without regard to the merits or demerits thereof because written reasons for the denial by the Carrier's highest appellate officer were not given within the time limits required by the Claim and Grievance Rule (System File K 214-44).

(3) For each or either of the reasons set forth in (1) and (2) above, the claim as presented shall be allowed, the claim reading

'... all time lost by Mr. Dodson should be paid to him and that he retain all seniority rights.'

OPINION OF BOARD: On July 5, 1974, extra Gang 5759, under the supervision of Claimant, Extra Gang Foreman Glen C. Dodson, was replacing ties between Mile Post 283 and Mile Post 284. After the gang had completed their assignment this day, Carrier discovered four sun kinks between MP 284, Pole 2 and MP 284, Pole 5. They also discovered that in the immediate area of the sun kinks at least 79 ties were left unspiked. As a result of the sun kinks, Carrier's main line was out of service from approximately 3:15 P.M. to 7:00 P.M. while the track gang was recalled to make the necessary repairs.

As a result of the foregoing, Claimant was charged with failure to properly protect and secure the main track at MP 284, Pole 2 to MP 284, Pole 5 on July 5, 1974 which resulted in the sun kinks. An investigation was held on July 19, 1974 following which Carrier determined that the charges against the Claimant were substantiated. He was consequently dismissed effective August 2, 1974.

The Employes initially assert that the Carrier violated Article V of the August 21, 1954 National Agreement when Carrier's highest appellate officer failed to give written reasons for disallowance of the instant claim within 60 days from the date same was filed. As a

result of this contractual violation, the Employees submit that the claim must be allowed as presented as required by Article V. Carrier argues that the purpose and intent of Article V of the August 21, 1954 National Agreement was met when the Employees were informed at a conference held on November 13, 1974 that the claim was denied. And even if Article V was violated, Carrier maintains that any monetary liability should not extend beyond December 23, 1974, the date on which they issued a written declination of the claim. The Carrier cites Award No. 16 of the National Disputes Committee in support of this contention.

After a careful review of the record before us, this Board finds the position of the Employees well founded. The Employees initiated a claim on behalf of the Claimant for reinstatement and pay for all time lost. The claim was progressed in the usual manner up to the Carrier's Director of Labor Relations who received same on September 24, 1974. On November 13, 1974, a conference was held to discuss this claim, at which conference the Employees' General Chairman was orally advised that the claim was denied. However, it was not until December 23, 1974 that Carrier notified the Employees in writing of the reasons for the declination of the claim.

It is manifestly clear from the foregoing that Carrier failed to comply with the requirements of Article V of the August 21, 1954 National Agreement when the Director of Labor Relations did not decline the instant claim in writing within 60 days of September 24, 1974, the date on which he admittedly received it. Rather, for some inexplicable reason, he waited until December 23, 1974 before he gave the Employees written reasons for the declination as required by Article V. While this Board is quite reluctant to render a decision based on procedural irregularities rather than on the merits of a claim, nonetheless in the instant dispute we find the mutually negotiated provisions of Article V mandatory and they must be applied as written. Article V(a), in clear and unambiguous language, provides that should any claim be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim in writing of the reasons for such disallowance. Article V(a) further provides that if not so notified, the claim shall be allowed as presented. The mandatory requirements of Article V(a) are obviously applicable to the claim at hand.

Although Carrier avers that any monetary liability should not extend beyond December 23, 1974, the date on which they issued a written declination, this Board agrees with the Employees that Carrier never raised this issue while the claim was being progressed on the property. Accordingly, based on a principle long adhered to on this Division, this Board has no jurisdiction to address that issue. Consequently, we must apply the clear provisions of Article V as written and allow the claim 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.