

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24859
Docket Number MW-25086

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The Carrier violated the Agreement when it refused to permit Truck Driver N. J. Rech to displace a junior truck driver in Gang M 272 on January 6, 1981 [System File NEC-BMWE-SD-198].

(2) The claim as presented by Claimant N. J. Rech on January 26, 1981 to Division Engineer J. F. Siravo shall be allowed as presented because said claim was not disallowed by Division Engineer J. F. Siravo in accordance with Rule 64(b).

(3) As a consequence of either or both (1) and/or (2) above, the claimant shall be compensated

"for all time lost as a bus driver in gang M 272.***

* * * *

The day's and hours of time lost are as follows: Jan. 6th, 1981, 7th, 8th, 9th, 12th, 8 hours each day for a total of 40 hours and for any day thereafter that the position was not filled and awarded."

OPINION OF BOARD: On January 26, 1981 N. J. Rech filed a claim for time lost when he was not allowed to fill a position pending award in preference to an employee with less seniority on the driver roster. He stated the days and hours lost were "June 6th, 1981, 7th, 8th, 9th and 12th, 8 hours each day for a total of 40 hours and for any day thereafter that the position was not filled and awarded". The position was advertised on January 9, 1981 and this advertisement was cancelled on February 4, 1981.

Rule 64(b) provides in substance that if a claim is disallowed, the person making the claim shall be notified in writing, of the reasons within sixty days. Further, "If not so notified, the claim or grievance shall be allowed as presented...".

Admittedly, Claimant was not notified in writing within sixty days that the claim was disallowed.

Accordingly on April 19, 1982 the Carrier wrote the Organization stating "However, without prejudice to our position as stated above, due to the particular facts and circumstances surrounding this case, we are agreeable to dispose of this matter by allowing the Claimant forty (40) hours at the applicable straight time Bus Driver's rate...".

The offer was rejected by Claimant.

As part of its ex parte submission the Carrier attached time sheets to establish the other employee (Foosse) was compensated at the driver's rate on only four days (i.e., January 6, 8, 9 and 14) after the first date cited in the claim and that no other gang member performed the Driver position in question during the period of the claim.

Organization contends these time sheets are "suspect" and were never relied upon during the handling on the property.

This Board has frequently refused to consider matters which were not raised on the property. The point is in this case the Carrier offered to pay the claim as presented to the extent specific dates were involved. Claimant contends the claim encompasses more than that by virtue of the "and for any day thereafter..." language and notes the information pertinent to the dates are ascertainable from the carrier's records. Those are the records to which Claimant now objects.

In the opinion of this Board the evidence is insufficient to establish Claimant is entitled to compensation beyond the amount offered by the Carrier.

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

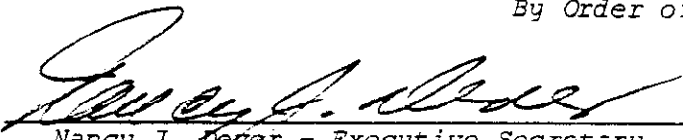
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984