

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Carrier violated the Agreement when it directed and required Track Foreman R. Williams to assume the duties, responsibilities and work load of two (2) positions during the vacation absence of Track Foreman R. P. Boney, November 11 through 15, 1985 (System File MW-86-14/444-91-A).

(2) Division Engineer J. W. Blasingame failed to timely disallow the claim presented to him by First Vice Chairman J. R. Solares on December 6, 1985 as contractually stipulated within Section 1(a) of Article 15.

(3) As a consequence of either or both (1) and/or (2) above, Foreman R. Williams shall be allowed an additional forty (40) hours of pay at his straight time rate of pay."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The background to this case is that the Track Foreman of Extra Gang 112 was on vacation for five (5) days from November 11 through November 15, 1985. This Claim arises from the charge that instead of utilizing a relief foreman, the Carrier elected to combine members of Extra Gang 112 with Extra Gang 136, thereby increasing the duties and responsibilities of Claimant, the Track Foreman of Extra Gang 136.

The Organization points out this Claim was presented to Regional Engineer J. W. Blasingame, who was the officer authorized to receive the Claim in accordance with Article 15. Notwithstanding, the Organization stresses the Carrier disallowed the Claim through L. J. Jenkins, Jr., who it insists was not the officer authorized to disallow claims. The Organization, therefore, argues the Carrier violated Article 15, and the Claim must be allowed as presented. Article 15, Section 1(a) states:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same within sixty (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 sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his 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."

Analysis of the above language indicates a claim must be presented in writing to the "...officer of the Carrier authorized to receive same...." However, Article 15 does not, likewise, require that a disallowance must come from the same officer. Rather, the language clearly states the Carrier must notify whoever filed the Claim of its disallowance. As in Third Division Award 27590, this Board finds no merit to the charge the Carrier violated the procedures of Article 15, Section 1(a) when it disallowed the Organization's initial Claim, and we reaffirm the reasoning set forth therein.

In support of its position that the Claimant's duties and responsibilities were increased during the week of November 11, 1985, the Organization cites the provisions of the National Vacation Agreement, which stipulates that not more than the equivalent of twenty-five percent (25%) of the workload of a given vacationing employee may be distributed among fellow employees without hiring a relief worker. Analysis of this record reveals one (1) laborer from Extra Gang 112 was assigned to work under the supervision of the Claimant on Gang 136. Aside from this undisputed fact, this Board finds no other probative evidence of record which supports the Organization's Claim that more than twenty-five per cent (25%) of the vacationing employee's work was transferred to the Claimant. Accordingly, we must deny the Claim for lack of supporting evidence.

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Award No. 28193
Docket No. MW-27555
89-3-86-3-819

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.

LABOR MEMBER'S DISSENT
TO
AWARD 28193 - DOCKET MW-27555

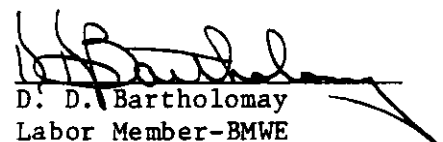
The Majority chose to ignore the established interpretation of the time limit rules when it determined that other than the officer designated to receive claims was allowed to respond thereto. Rather than delve into the confusion that will come from this Award, I will directed the Majority's attention to Third Division Award 25091, which held:

"This issue, the question of the authorized Carrier officer to receive and respond to claims on this property, was resolved by Third Division Award 23943 (Lieberman), wherein it was determined:

'All the authorities cited by the parties have been reviewed and it is clear that the great weight of authority in closely related circumstances supports the Organization's position. Those awards hold that the officer of the Carrier who had been previously designated as the individual to receive claims or appeals must be the officer who responds to such claims or appeals. For example, this Board in Award 22710 stated:

"We have reviewed the authority submitted by the parties. The great weight of authority supports the positions of the Organization that the Carrier committed a procedural error when an official other than the one designated to receive and process the claims responded to the claim.""

Therefore, I dissent.

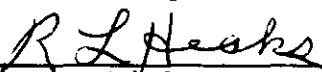

D. D. Bartholomay
Labor Member-BMWE

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBER'S DISSENT
TO
AWARD 28193, DOCKET MW-27555

The Dissent is concerned that "confusion" will result on this Carrier because of this Award. In support of its "confusion" theory, it cites two Third Division Awards involving a Rule on the Duluth, Winnipeg and Pacific Railway Company. Indeed, the second of the two cited Awards predicates its decision on the holding in the first Award as having settled the issue on the Duluth, Winnipeg and Pacific Railway Company. We trust that the Award in this case likewise will be cited as final authority on this property, and confusion will be averted.

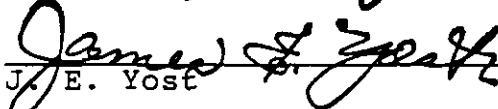
To be sure, there have been conflicting Board Awards on this issue over the years. A full review of such prior Awards was made in Third Division Award 27590, relied upon by the Majority in this case, and should eliminate future confusion.


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


P. V. Varga


J. E. Yost