

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago North Western Transportation Company (CNWT):

Claim of the Local Committee of the Chicago North Western Transportation Company of the Brotherhood of Railroad Signalmen on the Central Division that the Carrier violated Rule 19, Rule 21 and Rule 37, when it did not assign Senior Employee Mr. D. A. Androy, Job 001-08 Missouri Valley Signal Maintainer on Bulletin No. 11 dated June 6, 1988 as advertised on Bulletin No. 10 dated May 20, 1988.

Rules violated as follows:

(a) Rule 19, (b), #4 'An employee who is not furnished means of transportation by the company from one work point to another and who uses other forms of transportation for this purpose, shall be reimbursed for the cost of such other transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the company, he shall be reimbursed for such use of his automobile at the rate per mile currently established by corporate policy.'

(b) Rule 21, (a) 'Work Not Covered by Assignment: A fixed head-quartered signal maintainer required to perform work not covered by his assignment, as shown on the characteristic notice will be allowed additional compensation on basis of one-half regular hourly rate for time worked during his assigned hours. For time worked outside of assigned hours compensation will be allowed under Rule 14.'

(c) Rule 37, (a) Second paragraph: 'If the successful bidder is not placed on the new assignment within eleven days from the date of assignment, the employee shall be paid compensation equal to that of the new assignment but not less than that being received on the old assignment, plus \$5.00 per workday until placed on new assignment.'

Carrier now be required to compensate Mr. D. A. Androy starting June 14, 1988 as follows:

- (1) Rule 19 - Mileage to and from Missouri Valley plus expenses incurred.
- (2) Rule 21 - Half time for being away from assigned headquarters.
- (3) Rule 37 - \$5.00 per day for being held off assignment.

General Chairman's file CNWT-G-AV-142. Carrier file 79-88-10."

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 employes 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.

Claimant suffered a knee injury in 1982 and was ultimately assigned as a Signal Electronics Technician. He was restricted to "only occasional climbing."

Carrier did not assign Claimant to a Signal Maintainer position in mid-1988 even though he was the senior bidder.

Carrier defended its action, on the property, by contending that the Claimant was medically disqualified for the position and invited the Claimant to contact the Medical Department if he felt he was recovered.

The Claimant had been assigned as a Signal Maintainer prior to his current assignment. We find nothing on record to suggest that the Claimant ever advised Carrier that his physical condition had altered or that he had attained the physical dexterity necessary to once again assume a maintainer position. At a minimum, Claimant was required to place the Employer on notice. In the absence of such action, Carrier was entitled to rely on the then current status of its records.

As a procedural matter, we note that the Carrier denied the June 10, 1988 Claim on August 10, 1988, but the denial was sent to the General Chairman, whereas the Claim had been submitted by the Local Chairman. Rule 52 requires a response, within 60 days, to "...whoever filed the claim..." On August 19, 1988, Carrier conceded its error and forwarded a copy of the denial to the Local Chairman.

We find a violation of Rule 52. Our review of NDC Decision 16, Third Division Docket CL-12336, Award 5, PLB 1844 and Award 144, PLB 1459 suggests that the basic Claim should be allowed until August 19, 1988 and that it ceases at that time. We allow the \$5.00 per day as claimed but find no basis for mileage and expenses, or the 1/2 time for being away from assigned headquarters.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.