

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31290
Docket No. MW-31638
95-3-93-3-588

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

- (1) The Agreement was violated when the Carrier assigned Central Division Gang No. 4129 to install crossings at various locations between Osawatomie (Mile Post 335.5) and Stillwell (Mile Post 307), Kansas on the Kansas Division territory between July 29 and September 15, 1992 (Carrier's File 920636 MPR).
- (2) The Agreement was further violated when the Carrier failed to give written reasons for the denial of the claim as required by Rule 12, Section 2(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, under the provisions of Rule 12, Section 2(a), the claim shall be allowed as presented, i.e., Foreman O.R. Bowers and Trackmen B.K. Morgan, G.L. Hughey, T.C. Edwards and M.B. Clark shall each be compensated at their respective rates of pay for an equal proportionate share of all man-hours consumed by the members of Central Division Gang No. 4129 while working on the Kansas Division territory between July 29 and September 15, 1992."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Before any discussion of the merits can take place, a procedural challenge has to be resolved.

The claim was timely and properly presented and the Carrier Officer to whom the claim was presented, responded by saying:

"Your request is respectfully declined in its entirety."

Upon appeal, in addition to the merits, the Organization argues that since no reason was given for the declination, a violation of Rule 12, Section 2(a) occurred and the claim is payable as presented.

The Appeal Officer argued merits and presented an excellent argument that would have perhaps exempted the Carrier from any Rules violation, but said nothing to counter the procedural argument. In fact, nothing was said about the Organization's procedural argument until the case was advanced to this Board and, of course, that is too late.

Carrier did decline the claim, but no reason for declination was given. As a result, the claim is sustained solely because of the fatal procedural error. The merits have not been considered.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

Form 1
Page 3

Award No. 31290
Docket No. MW-31638
95-3-93-3-588

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.