

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37843
Docket No. MW-37223
06-3-02-3-193

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to pay Claimant D. L. Plagmann his five (5) percent production incentive bonus in accordance with Section 5A of the August 12, 1999 Agreement. (System File GPB-209-H/11-00-0166 BNR).
- (2) The Carrier violated the Agreement when it failed and refused to pay Claimant A. A. Sailer his five (5) percent production incentive bonus in accordance with Section 5A of the August 12, 1999 Agreement. (System File GPB-210-H/11-00-0167).
- (3) As a consequence of the violation referred to in Part (1) above, Carrier shall now ‘...make immediate payment of 5% of Claimant’s earnings, as required by the Agreement, for the time of September 12, 1999 through December 31, 1999. Since the Carrier has improperly withheld this payment from claimant, we further request that claimant receive interest on the amount of money he is owed, at 8% per annum, compounded monthly beginning thirty calendar days after December 31, 1999.’

- (4) As a consequence of the violation referred to in Part (1) above, Carrier shall now ‘...make immediate payment of 5% of Claimant’s earnings, as required by the Agreement, for the time of September 12, 1999 through December 31, 1999. Since the Carrier has improperly withheld this payment from claimant, we further request that claimant receive interest on the amount of money he is owed, at 8% per annum, compounded monthly beginning thirty calendar days after December 31, 1999.’”

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 were given due notice of hearing thereon.

The two claims in this case filed by Vice General Chairman A. R. Hohbein on February 11, 2000 have been consolidated because they present identical issues. Claimant Plagmann and Claimant Sailer worked as part of the mobile District 17 welding crew until the crew was abolished on October 8, 1999. Both Claimants displaced to a consolidated district mobile gang on October 11, 1999, the next work day. There was no break in service. The Claimants remained assigned to that gang through the end of 1999 and both were displaced in January 2000.

The Organization contends that the Claimants should have received a 5% production incentive for the period of September 12 through December 31, 1999 in accordance with Section 5A of the August 12, 1999 Agreement, which provides:

“Each employee assigned to any district mobile gang who does not leave the gang voluntarily for a period of at least six (6) months shall

be entitled to a lump sum payment annually equal to 5% of his/her compensation earned during the calendar year on that gang. Such compensation shall not exceed \$1,000 and shall be paid within 30 days of the completion of the employee's service on the gang; for mobile gangs not required to be disbanded each year, payment will be made within 30 days of the completion of each calendar year. If the company disbands the gang in less than six months, the company will be responsible for payment of the production incentive earned as of that date."

The Organization also refers to the September 10, 1999 Letter of Agreement, which states:

"The Production Incentive Bonus outlined in Section 5A will be effective September 12, 1999 and apply to all employees working on any district mobile position."

In both claims, the Organization contended that the Carrier failed to make payment within 30 days as required and therefore a sustaining award with 8% interest was warranted.

The Carrier initially denied the claim on the basis that the Claimants were not assigned to a mobile gang. However, documentation supplied by the Organization established that the Claimants were in fact assigned to a mobile welding gang within the relevant time period.

During the course of further on-property handling, the Carrier notified the Organization that the production incentive bonus had been paid to both Claimants. However, the correspondence produced by the Carrier in support of its position raises more questions than answers. It must be remembered that the instant claim for Claimant Sailer was filed on February 11, 2000 by Vice General Chairman Hohbein, yet a March 24, 2000 letter from the Carrier refers to a claim filed on March 2, 2000 by Vice General Chairman Weyrauch on Claimant Sailer's behalf. Although the Carrier's letter states that compensation for a production incentive bonus was paid, it appears to reference an entirely different claim.

By the same token, the Carrier's May 1, 2000 letter regarding Claimant Plagmann does not correspond to the instant claim. Instead, it references payment

of a production incentive bonus for the period January 1 through January 24, 2000 - a time frame different from the one at issue in this case.

On the basis of this record, we must conclude that the Organization established a violation of Section 5A of the August 12, 1999 Agreement. We further find that the Carrier failed to refute the Organization's prima facie case with probative evidence.

The Organization requests interest on the payment for the bonuses involved. We are not prepared to state that interest may not be awarded in any case under any circumstance. However, on this record, the Board is inclined to follow the clear weight of authority and deny the Organization's request for an interest penalty. As stated in Third Division Award 32506:

"... Even though a demand for interest is not illogical and is allowed in some arbitration settings, the weight of authority is to the contrary in Section 3 arbitration tribunals. (See, for example, Third Division Awards 24710, 20014, 18633 and 18464). In the absence of an Agreement Rule or practice to the contrary, and in the face of the authoritative precedents, there is no proper basis on which to sustain this claim for the requested interest payment. ..."

AWARD

Claim sustained in accordance with the Findings.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of August 2006.