Award No. 9933
Docket No. MW-8827

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

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

(1) The claim in behalf of Section Laborer E. L. Peterson, as presented in a letter dated October 27, 1955 file No. D-1-183 (identified as Carrier file MW-36-55) and the appeals in connection therewith were not disallowed in conformance and in compliance with Sections 1(a) and (c) of Article V of the August 21, 1954 Agreement and, in consequence thereof.

(2) The claim, as it was presented, should have been allowed.

(3) The Carrier be required and directed to allow Claimant Peterson's claim, as it was presented, because of the violation referred to in part one (1) of this claim and because of the Carrier's failure and "refusal to allow the claim, as presented, in recognition that its decisions in connection therewith did not conform to the requirements of Section 1(a) and (c) of Article V."

EMPLOYES' STATEMENT OF FACTS: Under date of October 27, 1955, file D-1-183, the undersigned General Chairman addressed the following claim letter to the Carrier's Division Engineer:

"October 27, 1955
File: D-1-183

Mr. E. P. Hackert, Division Engineer
The Denver and Rio Grande Western Railway Company
2125 15th Street
Denver, Colorado

Dear Sir:

This is in the form of a claim presented in behalf of section laborer E. L. Peterson located at Hot Sulphur Springs, Colorado account of work formerly performed by section laborers being assigned to night track patrolman.

All data in support of Carrier's position has been presented to the Organization and made a part of the particular question in dispute. The Carrier reserves the right to answer any data not heretofore presented to it.

OPINION OF BOARD: The basic claim is that, in violation of an agreement, certain work was assigned to a track patrolman rather than to a section laborer. It is Petitioner's contention that irrespective of its merits the claim must be sustained since, in disallowing it on the property, Carrier officers failed to give any reason and thereby violated Article V, Section 1(a) and (c), of the applicable August 21, 1954 Agreement. That provision expressly requires that "in disallowing any claim, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim . . . in writing of the reasons for such disallowance." The provision also prescribes that "if not so notified, the claim or grievance shall be allowed as presented" and stipulates that these requirements shall apply to appeals taken to each succeeding Carrier officer.

This Board has had prior occasion to consider the meaning and effect of this provision and has consistently enforced it, albeit at times reluctantly because of its technical nature, where no written reason was given by a Carrier officer for disallowance of a claim during one or more stages of its processing on the property. See Awards 9205, 9253, 9492, 9544 and 9756. The reasoning underlying these awards is that, no matter how technical the requirement, the language of the controlling provision is definite and mandatory and the contracting parties must be held to the obligations to which they have by mutual agreement committed themselves, particularly since the Board does not have the latitude to add to or subtract from the Agreement or to modify its terms. At the same time, the awards of this Division indicate that Article V does not require that the "reasons" for disallowance be lengthy or detailed. See Awards 9615, 9835; cf. Awards 2 and 6 of Special Board 186.

In the present situation, there is no question but that in disallowing the claim on Petitioner's appeal from the Division Engineer's decision, the Assistant Superintendent did not offer even the pretense of a reason, merely stating "request in this case is declined." By no reasonable interpretation can his decision be held to have complied with the plain mandate of Article V, Section 1(a) and (c). This is no less true when that decision is read together with the General Chairman's letter of November 15, 1955, to the Assistant Superintendent. cf. Award 9615. It is apparent, therefore, that the Carrier has violated the Agreement and that we must under the language of Article V and the awards interpreting it, allow the claim as presented unless some other factor is present that calls for a different result.

Unlike the situation presented in Award No. 40 of Special Board of Adjustment No. 170, the basic claim in this case is not defective for it is comprehensive, clear and definite. The mere fact that it cites no specific rule violation does not render the claim fatally defective, whatever justification that omission may provide for a more general and brief statement of reason than might otherwise be acceptable. Since it is unnecessary to do so, we are not ruling as to the sufficiency of the disallowance replies of the Division Engineer and Director of Personnel and whether or not they satisfy the "reason" requirement.

There is no question of waiver since Petitioner was consistently careful in processing the claim to notify the appropriate Carrier officers that it was maintaining its contention as to noncompliance with Article V.

Contrary to the Carrier's position, we perceive no valid basis for limiting

the claim to the date the Director of Personnel (who followed the Assistant Superintendent in the appeals procedure on the property) issued his statement of disallowance, even if we were to assume that his statement adequately complied with the requirements of Article V. The point was not mentioned on the property or in the parties' Submissions and at this stage, without the benefit of full discussion, fails to persuade us that it rests on sound logic and possesses merit. However tempting it may be to do so in certain situations, we are not disposed to consider equities or adopt artificial reasoning in order to avoid a result, technical though it may be, that is plainly required by the terms of an agreement to which the Carrier as well as the Petitioner are parties. This is not to say that our conclusions with respect to this limitation point might not be different in a case where, as was the situation in Award 8318 and Second Division Award 3298, the question had been explored on the property and additional pertinent sub-sections of Article V cited. (Also cf. Award 8318 where the claim itself was limited in time and sustained as presented.)

Our review of the entire record and the awards brought to our attention by the parties satisfy us that the claim must be sustained, although it has not been considered on its merits.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 applicable Agreement of August 21, 1954, has been violated.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1961.