

Award No. 9934

Docket No. MW-9051

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, beginning on August 15, 1955, it assigned other than Equipment Operators to operate Ballast Regulator BR-1;

(2) The Carrier further violated the Agreement of August 21, 1954, between the parties hereto, particularly Section 1 of Article V, when it failed and refused to allow the claim as was presented, in recognition of the Carrier's failure to render a valid and recognizable decision in disallowing the claim as provided and required by Section 1 of Article V;

(3) The Carrier be required to allow the claim as presented in Local Chairman C. R. Alberts' letter of September 12, 1955, addressed to Division Engineer B. S. Converse.

EMPLOYEES' STATEMENT OF FACTS: During the late Summer of 1955, the Carrier purchased and placed in service in the Maintenance of Way and Structures Department, a new machine identified as "Kershaw Ballast Regulator" and numbered this machine as "Ballast Regulator BR-1". The Employees were not consulted with respect to negotiating a suitable rate of pay or working conditions in connection with the operation of the new Ballast Regulator BR-1.

Under date of September 12, 1955, the following claim was filed:

"Granite, Colo., September 12, 1955

Mr. B. S. Converse,
Division Engineer,
Grand Junction, Colo.

Dear Sir:

Entering claim favor of the following men as listed. Section Laborers, and equipment oilers be allowed difference they received and what they should of received as equipment operators. Account car-

Although the Division Engineer who answered the Local Chairman's letter of September 12, 1955, is no longer in service, the Carrier holds the provisions of Section 1 (a) and (c) of Article V of the August 21, 1954 Agreement—which have no bearing on the case at issue—were fully complied with.

Here we have a case that is not covered by any provision of the current Maintenance of Way Agreement nor by any settlement in connection therewith, yet the Brotherhood contends that Sections 1 (a) and (c) of Article V of the August 21, 1954 Agreement requires payment of the claim. The Brotherhood has not cited, and cannot cite, any rule of the current working agreement which has been violated. Even among men inclined to be unreasonable, it is obvious that Sections 1 (a) and 1 (c) of Article V of the August 21, 1954 agreement would have no bearing on or application to a claim not supported by any rule of the agreement. The Brotherhood has not proven and cannot prove that those signatory to the August 21, 1954 Agreement intended that Sections 1 (a) and (c) of Article V had application to any and all claims—whether they had any merit or not simply because the replies of the various officers of the Carrier to the Brotherhood's letters in connection therewith did not suit the Organization.

The Carrier again asserts the Brotherhood has not shown—and cannot show—any rule or settlements which would require Carrier to use two equipment operators on a Ballast Regulator. To sustain the claim of the Brotherhood would be the equivalent of establishing a new rule which power is not vested in your Board by the Railway Labor Act.

All data in support of Carrier's position has been presented to the Brotherhood 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 Carrier violated an applicable agreement when it assigned other than Equipment Operators to certain work beginning August 15, 1955. Petitioner contends that irrespective of its merits this claim must be sustained since, in disallowing it, Carrier officers neglected to give any reason and thus violated Section 1 (a) and (c) of Article V 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 stipulates that these requirements shall apply to appeals taken to each succeeding Carrier officer and prescribes that the claim "shall be allowed as presented" if the required notification is not given.

It is clear that in disallowing the basic claim, the Division Engineer failed to give any reason whatsoever, namely replying "Claim denied". The claim, on the other hand, was clear, comprehensive and not defective in any material respect. The issues in this case are substantially similar to those we considered in Award 9933 and we are satisfied that the reasoning and conclusions set forth in that Award are equally applicable here.

The fact that Petitioner's appeals on the property were taken on the merits as well as on the Article V procedural point does not call for a different result in this case. Petitioner never abandoned the procedural objection but on the contrary made it abundantly clear in its appeals that it was maintaining its position that Carrier had violated Article V, Section 1 (a) and (c).

Upon careful analysis of the record, we perceive no valid basis for reaching

a result at variance with our decision in Award 9933. The claim will be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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, was 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.