

Award No. 10684

Docket No. MW-10147

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY**

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

(1) Carrier violated the agreement on October 30, 1956 when it assigned or otherwise permitted Supervisor H. Eldridge to deliver ditching machine No. 1 to Yard Center from Danville, using Truck No. H-69.

(2) That the decision by Mr. Huffman, Engineer Maintenance of Way, dated November 5, 1956, wherein he disallowed the above stated claim, was not in conformance with the requirements of Section 1(a) of Article V of the August 21, 1954 Agreement.

(3) That the claim presented by Mr. Simpson for five hours' pay at \$3.27 per hour account of the violation referred to in Part (1) of this claim be allowed as presented because of Mr. Huffman's failure to comply with Article V.

EMPLOYEES' STATEMENT OF FACTS: Under date of October 30, 1956, Equipment Maintainer J. Simpson submitted claim for five hours' over-time account of Supervisor H. Eldridge delivering ditching machine No. 1 to Yard Center from Danville, using truck No. H-69.

Under date of November 5, 1956, Mr. H. Huffman, Engineer Maintenance of Way, denied the claim in a letter reading as follows:

"Danville, Ill., November 5, 1956
300-32-D

Mr. J. Simpson
Oaklawn

I am returning your service card and form MW 116 report claiming 5 hours at \$3.27 on October 30th account Mr. Eldridge

drive the truck from Danville to Yard Center. The claim is without support under the agreement rules here controlling and must, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between the Brotherhood of Maintenance of Way Employees and the Chicago and Eastern Illinois Railroad.

The Employees contend a violation of the Scope Rule and that Carrier did not comply with Article V, August 21, 1954 Agreement.

In the handling of the claim it appears the Carrier did not comply with the Rule requiring the Carrier to give the reason for denying the claim.

Article V of the August 21, 1954 National Agreement, the well-known time limit rule, requires that claims be processed in the specified manner on the Carrier's properties and includes a requirement for written disallowance of claims and the reasons therefor.

The Carrier contends that the Petitioner abandoned the claim under Article V and proceeded on the merits.

This claim was presented to Mr. Huffman who denied the claim without giving a reason.

It was then appealed to Mr. Moore on the basis that Article V was violated. Mr. Moore denied the appeal on the merits. Appeal was then made to the highest officer on the property, Petitioner did not state in the appeal that it was solely on Article V and also did not specifically reserve their rights under Article V. Instead requested a conference to discuss the claim. It appears from Exhibit A-5 R. P., 15 that the merits were discussed and still Petitioner does not reserve his rights under Article V. We are of the opinion this constituted a waiver and that the claim could then, only be appealed on its merits. It was not appealed on its merits.

For the foregoing reasons we believe there has been no violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing hereon, 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1962.