

Award No. 10759

Docket No. MW-9606

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS TERMINAL RAILROAD COMPANY**

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

(1) The failure of Vice President Dennis to notify General Chairman Stringer, in writing, of the reasons for his disallowances of the six claims which were denied by letter of July 17, 1956, nullified and voided said decision of July 17, 1956, the letter in question reading as follows:

"St. Louis 1, Mo.
July 17, 1956

"Mr. Robert E. Stringer, Gen'l Chairman
Bro. of Maintenance of Way Employes
705 Chestnut Street
St. Louis 1, Missouri

"Dear Sir:

"Confirming our conference of July 16th, 1956, following disposition was made of six (6) appeal claims:

- "No. 1 Claim of B & B foreman R. Medler and carpenters L. M. Horney, Andrew Northcutt, Otto Weber, and Art Ball for 4 hours, April 8, 1956, account carmen from Granite City Shops fastening a rug to the floor in the Vice-President's office at St. Louis. I declined this claim.
- "No. 2 Claim of Andrew Northcutt, B & B Carpenter, for 3½ hours on February 22, 1956, account B & B Foreman, Rella Medler, called to perform duties on McCambridge Viaduct. I declined this claim.
- "No. 3 Section laborers, T. Garafale, R. D. Davis, W. M. Tyler, E. L. Davis, and W. H. Peterson for the differences in pay between that which they received at section laborers rate and the rate of B & B carpenters for April 25, 1956, account they were assigned to move some file cabinets

and other office equipment in the general office. I declined this claim.

"No. 4 Claim of section laborers T. Garafalo, W. M. Tyler, M. L. Davis, and M. H. Peterson, dated April 24, 1956, for the difference in pay between section laborers rate which they received and the rate of B & B helper account they were used to move files in the general office. I declined this claim.

"No. 5 Claim of section laborers T. Garafalo, W. M. Tyler, E. L. Davis, and M. H. Peterson, dated April 30, 1956, for the difference in pay between section laborers rate, which they received, and rate of B & B helper account being assigned to move files in the general office. I declined this claim.

"No. 6 Claim of section foreman, W. E. Gaultney and Section laborers, H. Holifield, R. Singleton, G. Tanna, and G. Daniels for the difference between straight time, which they were paid, and time and one-half on January 30, 1956. I declined this claim, but advised you that we were agreeable in making a joint submission on this claim to National Railroad Adjustment Board, Third Division.

"Yours truly,

"/s/ F. L. Dennis

"AEM:jo"

(2) Inasmuch as the above-mentioned decision is not in compliance with Article V Section 1 (a) and (c), of the August 21, 1954 Agreement, the above-mentioned six claims are now payable in full.

EMPLOYEES' STATEMENT OF FACTS: Each of the six claims referred to in the letter quoted in Part (1) of the Statement of Claim was initially presented and subsequently appealed on the property in the usual and customary manner, each claim having been individually and separately handled up to and including Vice-President Dennis.

Denial of each of said six claims was, however, incorporated into one letter by Vice President Dennis, namely, the letter quoted verbatim in Part (1) of the instant Statement of Claim.

In six separate letters dated December 20, 1956, General Chairman Stringer called Mr. Dennis' attention to the fact that he (Stringer) had not been notified in writing of the reasons for Mr. Dennis' disallowances of those six claims and requested that each claim, as presented, be allowed in conformance with the provisions of Article V.

General Chairman Stringer's request was denied.

The Agreement in effect between the two parties to this dispute dated April 1, 1952, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: On or about June 1, 1953, the carrier served a notice upon the Employees, proposing to establish a rule to provide time limits for presenting and progressing claims or grievances. The Carrier's proposal was disposed of by the adoption of Article V in the August 21, 1954 Agreement. The pertinent portion thereof reads as follows:

"On April 2, 1956, Roadmaster declined this claim advising the men involved that there was no violation of this agreement.

"On May 15, 1956, you appealed this claim to General Supt. McOwan and conference was held on May 29, 1956.

"On June 5, 1956, Mr. McOwan confirmed his conference with you on this claim and in declining claim stated that: "I fail to see where there has been any violation of the agreement. Therefore, claim is declined."

"It is our position that we have complied with that portion of the August 21, 1954, agreement which you have quoted. Therefore, I have no Alternative but to advise you that I am again declining the above claim.

Yours truly,

/s/ F. L. Dennis"

It is the position of the carrier that we have complied with the provisions of Article 5, Section 1 (a) of the August 21, 1954, agreement, that in each of the above six (6) claims, the employees were advised in writing within sixty (60) days our reasons for declination of their claims, and that upon appeal to the General Superintendent they were advised in writing within sixty (60) days our reasons for disallowance of their claims. On appeal to Mr. Dennis, the highest officer designated to handle such disputes, they were fully advised in conference our reasons for declination of their claims and such conference was confirmed by letter to the General Chairman.

There is no merit to the claim of the organization that the carrier failed to comply with the provisions of Article 5, Section 1 (a) of the August 21, 1954, agreement. Therefore, carrier respectfully request that claim be denied.

All Matters contained in this submission have been the subject of discussion and/or correspondence between the parties to this dispute on the property.

OPINION OF BOARD: The parties are in agreement that the only question to be decided by this Board is: Did the Carrier comply with Article V, Sections 1 (a) and (c), of the August 21, 1954 Agreement when the highest officer of the Carrier in a letter dated July 17, 1956 denied the subject claims without declaring in writing his reasons therefor?

The merits of the original six claims are not before us. The Claimants seek payment solely on the basis of the failure of the Vice-President to state in writing his reasons for denial of the claims.

The Carrier contends that it has complied with the Agreement. Carrier alleges that the denials of the Vice-President fulfilled the requirements of Article V when read in the light of prior handling, namely, the prior written denials of the officers with whom the claims had been handled **before** appeal to the Vice-President, which **prior** denials stated in writing Carrier's reason for disallowing the claims, and that the General Chairman was **verbally** fully advised of Carrier's reason for disallowing the claims at the conference between the General Chairman and the Vice-President.

It is quite apparent that the reasons for denial of each of the six claims made a part of this claim were not given in the July 17, 1956 letter when Mr. Dennis stated, "I declined this claim."

This Division has held under Article V of the August 21, 1954 Agreement that such claims are valid and must be allowed because of the Carrier's neglect of its obligation. We refer specifically to Award 9554, and others, wherein it was held:

AWARD 9554:

"It is not disputed that the Carrier declined the claim and provided Claimant with its decision in writing with an explanation of the reasons for the denial at all levels but the last before appeal to this Board. At that stage the claim was declined in writing the day after the conference on it, but without including a statement in writing of the reasons for the declination.

"This lapse is claimed to be such a violation of Article V, 1(a) of the National Agreement of August 21, 1954 as to warrant sustaining the underlying claim without regard to its merits.

"Article V 1(a), the well-known time limit rule, requires that claims be processed in the specified manner on the Carriers' properties and includes a requirement for written disallowance of claims accompanied by a written statement of the 'reasons for disallowance.'"

However, this is not an original proposition before this Division. In cases we find undistinguishable in principle sustaining award were made — 9205, 9253, 9492.

The record clearly indicate that although the Carrier did, following conference, give written confirmation of its decisions, **it did not give written confirmation of the reasons for its denial of the claims.**

In view of the record before us we have no alternative but to direct the claims be allowed as presented. The Agreement was violated.

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 Agreement 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 6th day of August 1962.