

Award No. 10936

Docket No. MW-10305

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NORFOLK AND WESTERN RAILWAY COMPANY**

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

(1) B&B Supervisor Cantwell's disallowance of the claim presented to him under date of January 11, 1957 (re: Claim for time for B&B Forces for December 25, 1956 and January 1, 1957) was not in compliance with the provisions of Section 1(a) of Article V of the August 21, 1954 Agreement and, as a consequence thereof

(2) The claim as presented under date of January 11, 1957 should be allowed in compliance with Section 1(a) of the aforesaid Article V and that Carrier now be directed and ordered to allow said claim.

EMPLOYEES' STATEMENT OF FACTS: Under date of January 11, 1957, B&B Supervisor Cantwell was presented with a claim in a letter reading:

"January 11, 1957

Mr. L. C. Cantwell, Supervisor B&B
Norfolk & Western Railway Company
Portsmouth, Ohio.

**Re: Claim for time for B&B Forces for December
25, 1956 and January 1, 1957—**

Dear Sir:

Please consider this as a time claim for the following employees: Mason Force No. 1, Foreman W. A. Newman, C. F. Clark, W. R. Richardson, W. H. Preston, H. S. Murphy, C. A. Woods, R. S. Toller, G. M. Pertuset, H. M. Sanderson, Colbert Bradley, Abel Scott, M. W. McGuire and J. W. Terry. Mason Force No. 2, Foreman J. E. Smith, Charles Bayes, J. J. Hatcher, G. B. Akers, Lonzo Ellis, Prichard Hazlett, C. H. Hundley, H. R. Copley, Mack Hayton, F. B. Salmons and

"The filing of the claim and answer on the local level are but the first steps in handling disputes. Full consideration awaits conference between the General Chairman and the personnel officer, at which time the parties meet for extensive exploration of the grounds for and against the claim. Often in the original filing of the claim no reasons whatever are presented in its support other than asserted violation of rule. Surely it was not intended that the claimant is to be limited to the reasons stated at the time of the initial filing of the claim, and if not, then Carrier cannot be limited to the reasons stated in denying the claim. It cannot give reasons for denying when it does not know what reasons are to be urged to support the claim. If carrier is not to be limited to the reasons for disallowance at the time it is first disallowed, the purpose of requiring the statement of such reasons is obscure and we think the rule is so vague and uncertain in its intent and so indefinite in its meaning and application that no detailed statement of reasons is required thereunder and that notice for disallowance here given satisfies its requirements." (Emphasis ours.)

The above cited Awards Nos. 2 and 6 by Special Board of Adjustment No. 186 supports this Carrier's position that the notice of disallowance of the claim as contained in letter of the Supervisor of Bridges and Buildings dated January 14, 1957 (Carrier's Attachment "C") satisfied the requirements of Paragraph (a), Section 1, Article V, quoted on Page 8 of this submission.

Dismissal or denial of this claim is respectfully requested because the Employees failed to appeal or reject the decision of Supervisor of Bridges and Buildings Cantwell, dated January 14, 1957, (Carrier's Attachment "C") within the sixty-day time limit provided for in Paragraph (b), Section 1, Article V, of the Time Limit on Claims rule in the Maintenance of Way Agreement.

All material used in this submission was presented to or was known by the Employees while the claim was being progressed on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: In view of the Record herein it appears that claim was filed on behalf of the employees January 11, 1957. That on January 14, 1957, Supervisor L. C. Cantwell, acknowledged the claim received herein, by letter as follows, to the General Chairman,

"Yours of the 11th above subject. Payment of time as claim is hereby declined."

Nothing further transpired on the claim as made until March 15, 1957, when the General Chairman, wrote the Carrier that it had failed to give its reason for declining payment of the claim as made, and that more than sixty days had elapsed from the time said claim was filed and by such failure of Carrier to furnish its reason for declining said claim, the claim as presented should be allowed in accordance with the provision of Article V, Section 1(a), of the National Agreement between the parties effective August 21, 1954.

We are of the opinion this Division, in numerous cases cited here, has upheld the provision of Article V, Section 1(a), as to claims under situations similar to the matter before us.

The record shows that it was not until March 18, 1957 that Carrier for the first time gave its reason to the employees why such claim was declined. Such

action by the Carrier does not comply with the provision of the August 21, 1954, National Agreement.

The claim as made should be sustained as to all employees performing service under supervision of L. C. Cantwell, Supervisor B&B during dates involved here.

The record further shows that employee C. L. Massey, has been paid at the holiday rate for the time involved here.

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 Claim as presented should be sustained in accordance with the foregoing Opinion.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.