

Award No. 13270

Docket No. MW-11820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow, by default, the claim appealed to Mr. Edwin by General Chairman Cox in a letter dated February 19, 1959 (representing claim in behalf of Water Service Foreman I. E. Read and employes under his supervision, account Mechanical forces installing gas lines and gas heaters to take the place of old steam lines and steam heaters in Pine Bluff Shops) which was not disallowed by Mr. Erwin until May 18, 1959.

(2) Because of the violation referred to in Part (1) of this claim, the Carrier now be required to allow the claim as presented and appealed.

EMPLOYES' STATEMENT OF FACTS: Under date of September 15, 1958 the Brotherhood's General Chairman addressed the Carrier's Division Engineer as follows:

N-786

"September 15, 1958

Mr. D. H. Jenkins, Division Engineer
St. Louis Southwestern Railway Lines
Pine Bluff, Arkansas

Dear Sir:

Please accept this as claim for Water Service Foreman I. E. Read and all men under his supervision to be paid their proportionate share of the total number of man hours consumed by shop craft employes in installing gas lines and gas heaters to take the place of old steam lines and steam heaters in Pine Bluff Shops. Claim effective 60 days previous to the date of this letter.

This is work that has always been performed by the employes we represent.

Car shed

Two service lines to gas rivet heaters installed by water service repairmen. Lines to gas heaters installed by sheet metal workers.

Line to Rip 1 and switchmen's shanty

Installed by water service repairmen. Switchmen's shanty outside shop fence.

Car Dept. tool room in car shed

Installed by water service repairmen.

Old blacksmith shop used by diesel store dept.

Installed by water service repairmen.

The above tabulated locations are not the locations involved in the present claim nor do they represent all the buildings where gas lines and heaters existed prior to claim. They represent only the locations where the water service repairmen allege they have previously installed and maintained gas lines and heaters.

It is clear that the sheet metal workers have installed and maintained most gas lines and heaters in mechanical buildings and about the shop area. The gas lines they installed which are the subject of present claim are extensions of gas lines they had previously installed and maintained. Water service repairmen did not have right to extend the gas lines or install the heaters.

V

In conclusion, the Carrier respectfully submits that the claim is not supported by the rules and should be denied if not dismissed for reasons stated above.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole question in this claim presented to this Board is: Did the Carrier violate Article V of the August 21, 1954 Agreement which reads in part as follows:

"ARTICLE V—CARRIERS' PROPOSAL NO. 7

"1.(a) . . . Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, . . .

"1.(c) The requirements . . . in paragraph (a) . . . shall govern in appeals . . . to each succeeding officer, . . ."

when the Employes representative did not receive denial of the appeal filed herein within the statutory 60 day period above referred to?

The facts of the case not controverted by either party are:

1. February 19, 1959: Appeal from the decision of Assistant Manager Personnel Whitham's letter of February 12, 1959 was filed by W. E. Cox, General Chairman of the Organization with M. L. Erwin, Manager Personnel of the Carrier.

2. March 26, 1959: M. L. Erwin, Manager of Personnel mailed to W. E. Cox, General Chairman, a letter denying the appeal.

3. General Chairman W. E. Cox did not receive the letter.

4. May 14, 1959, General Chairman W. E. Cox requested allowance of the payment of claim under Article V of the August 21, 1954 Agreement.

The controlling considerations are:

1. Mail was the usual method of handling of claims between the parties.

2. Date claimed March 26, 1959, as date of mailing of denial of appeal was well within the 60 days from February 19, 1959, date of appeal.

3. Organization has never denied that said letter was mailed.

4. Correspondence procedures of Carrier: Correspondence copy file, time limit record, mailing procedures, seem to be reasonable and in order.

Under these circumstances both parties have a right to rely on the regularity of the mails. Conform 10490 (Dugan) 1443 (McAllister) 3541 (Second Division)

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 not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.