Award No. 14754
Docket No. MW-13102

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the agreement and the supplements thereto when it directed and required Section Foreman Paul Lamping to assume the duties, responsibilities and work load of two positions during the vacation absence of Section Foreman Carl Matthes from October 3 to October 14, 1960, both dates inclusive.

(2) The Carrier further violated the agreement when Roadmaster L. W. Cole and Superintendent K. R. Schwartz failed to give reasons for their respective disallowances of the claim in favor of Foreman Paul Lamping.

(3) Because of the violations referred to above, the carrier now be required to allow the following claim which was presented in a letter dater October 25, 1960.

"Foreman Paul Lamping is entitled to an additional 8 hours per day for each of the days he supervised the men on Section Number 11, reported their time and was held responsible in every respect while Foreman Carl Matthes was on vacation."

EMPLOYES' STATEMENT OF FACTS: The claimant is employed as a Section Foreman and is assigned to Section No. 9, and is responsible for the maintenance and upkeep of the track and right-of-way on such assigned territory.

Mr. Carl Matthes is employed as Section Foreman on Section No. 11, and is responsible for the maintenance and upkeep of the track and right-of-way on such assigned territory.

The 1960 vacation for Section Foreman Matthes was scheduled to begin

performed only about 20% of the work which would have normally been performed by Section Foreman Matthes had he not been on vacation and this consisted primarily of patrolling the track of Section 11 three times per week (approximately 1 hour and 15 minutes per patrol) and making out the daily time for the 2 laborers regularly assigned to Section 11 (approximately 15-20 minutes per day). It should perhaps be explained that inasmuch as the two crews had been combined it was not necessary that their daily time be made out separately but instead it could and should have been combined also, however, the fact that it was not is immaterial.

There is attached as Carrier's Exhibit "A" copy of letter by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman, under date of March 2, 1961.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case each party contends that the case should be disposed of without consideration of its merits: Employes argue that failure of Carrier to notify Employes in writing sufficiently specifically of the reasons for disallowing the claim requires, under the terms of Section 1 (a) of Article V of the August 21, 1954 Agreement, that the claim be allowed as presented. Carrier argues that because the claim was never discussed in conference on the property as provided in the Act, it is improperly before the Board and should be dismissed; and that the claim should be dismissed as procedurally deficient because Employes on the property cited no specific rule or agreement as having been violated and those cited for the first time in Employes' Ex Parte Submission were not discussed on the property.

The record shows that Employes at no time on the property cited any specific rule as violated by Carrier's acts complained of (except, at the end, the procedural rule contained in Article V, Section 1 (a), which did not relate to the acts of Carrier giving rise to the original claim, but to Carrier's alleged omissions in answering that claim); that Carrier in its correspondence repeatedly pointed out to Employes that they had not alleged the violation of any specific rule or agreement without succeeding in eliciting from Employes such a citation. We have held in our Award 1394—Referee House, that the specifying on the property of the rule or rules alleged to have been violated is not an error barring consideration by us of the merits of a dispute, if the record shows that the issue was clearly joined on the property and the belated naming of the involved rule did not change or add to the dispute. This does not mean, however, that Employes may without peril to their case fail on the property to meet the challenge of Employer to name the rule or rules alleged to have been violated: Employer is entitled to clarity about the issue as posed by Employes before it can be required to argue about it in specific terms, and the burden is on Employes to make their case clear enough so that the discussion on the property may be to the point and, possibly, productive of agreement. In this case, because of the continued failure of Employes to meet the challenge of Employer to name the rules alleged to have been violated, while demanding of Employer more than a general denial that Employer had violated any provision of the Agreement, the record shows that the issue was not clearly joined on the property. Since we will dismiss the Claim for this reason without treating with its merits, we need not deal with the other arguments set forth above.

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 Employes involved in this dispute are respectively Carrier and Employes 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;

That Employes failed and refused to make timely allegation of violation of any rule or agreement, with the result that the issue was not clearly joined on the property.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1966.

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