



Award No. 15561

Docket No. MW-14672

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 claim presented in behalf of Assistant Foreman E. W. Osthoff by General Chairman J. G. James in his letter of September 21, 1962 to the Carrier's Roadmaster should have been allowed as presented, because neither the Carrier's Roadmaster nor the Carrier's Superintendent disallowed said claim as required by or in conformance with Section 1 of Article V of August 21, 1954 Agreement. [Carrier's Case D-1428.]

(2) Carrier be required and ordered to allow the claim as presented in the aforementioned letter of September 21, 1962, namely, that Assistant Foreman E. W. Osthoff be allowed the difference between the Assistant Foreman's rate of pay (\$420.39 per month) and the Foreman's rate of pay (\$452.10 per month) "from the date he was directed to the job or assigned by bulletin until the proper rate is authorized."

EMPLOYEES' STATEMENT OF FACTS: The following quoted correspondence fully and accurately sets forth the factual situation involved in this case.

LETTER NO. 1.

"September 21, 1962

The Roadmaster
CMSt.P&P Railroad
Marquette, Iowa

Dear Sir:

Please accept this as a formal claim in favor of E. W. Osthoff for a gang foreman's rate of pay instead of the assistant foreman

Chairman, under date of April 12, 1963 and as Carrier's Exhibit B copy of letter written by Mr. Amour to Mr. James under date of May 2, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim before us here is predicated on allegation by the Organization that Carrier failed to conform to Article V of the August 21, 1954 Agreement, insofar as denial of the claim is concerned.

Carrier originally declined the claim (its filing date was September 21, 1962) on October 9, 1962 in this language:

"Payment of this claim is herewith declined as it is not in accordance with schedule rules and agreement."

We had a similar claim before us in Award 14395 where the Carrier had denied the Claim "because it was not supported by the rules agreement."

That claim was denied.

The same phrasing — "not in accordance with" and — "not supported by" the rules agreement could only be interpreted to mean that Carrier believed its action subjected to claim did not violate the agreement. That most certainly meets the requirements of Article V of the August 24, 1954 Agreement, and we must, therefore, deny this claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 12th day of May 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.