Award No. 16152
Docket No. MW-14059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned other than Group 3 Track sub-department employes to perform in excess of "one (1) hour of continuous cutting or two (2) hours of intermittent cutting for one employe in any one day" on each of the following dates:

July 21, 24, 28, 1961
August 25, 28, 29, 30, 31, 1961
September 1, 5, 6, 7, 8, 11, 12, 1961.

(2) Roadmaster J. P. Schramm did not render a valid and/or official decision on the subject claim which was presented to him in a letter dated September 13, 1961.

(3) The following quoted claim, presented in a letter dated September 13, 1961 now be allowed because of the violations referred to in Parts (1) and (2) of this claim.

"Therefore, we respectfully request that you now compensate Mr. John Owens of Group 3 Track Sub-Department for the difference in pay that he received on the dates and hours set forth above as a grinder operator and that he should have received as a welder on the dates and hours set forth above. (Total number of hours — 109.)"

EMPLOYES' STATEMENT OF FACTS: The factual situation involved in Part (1) of this claim was fully described in the letter of claim presentation, which reads:

"BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

September 13, 1961
Case TG-7-61

Mr. J. P. Schramm, Roadmaster
Elgin, Joliet & Eastern Railway Company
Gary, Indiana

(e) An employe assigned to the operation of any grinding device used in connection with welding work as described in the paragraph next preceding shall constitute a grinder operator. Helpers shall be employes assigned to assist welders and grinder operators in the performance of their work."

(Rule 56 II (d) and (e) above are as they appear in the current BMWE Schedule, as revised and re-issued August 1, 1952.)

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends Carrier used other than a Group 3 Track Sub-department employe to perform certain oxy-acetylene cutting of metal on the dates of claim in violation of Rule 56-II (d) of the applicable Agreement which in part provides as follows:

". . . The cutting of metal with an oxy-acetylene cutting torch in connection with work in the Maintenance of Way Department covered by this agreement will also be assigned to employes of Group 3, Track sub-department, except that up to one (1) hour of continuous cutting or not exceeding two (2) hours of intermittent cutting for one employe in any one day may be assigned to other employes covered in the scope rule of this agreement."

Claimant seeks compensation for the difference between the rate of pay he received as a grinder operator and the rate of pay that he would have received as a welder on the specified dates of claim.

In the first instance, Petitioner contends that the claim must be allowed as presented because Carrier's initial letter of denial was unsigned. The thrust of Petitioner's position is that the unsigned letter did not constitute a valid disallowance, and that Carrier thus failed to deny the claim within the prescribed time limit found in Article V. 1 (a) of the August 21, 1954 Agreement. Petitioner cites various prior Awards of this Board which involved the failure of certain respondents to submit in writing their "reasons" for denying claims within the prescribed time limitations. Such Awards are readily distinguishable from the present case and are not analogous. Here, there is no issue concerning Carrier's reasons for denial nor any evidence that Claimant was either misled or prejudiced by the absence of the signature in question.

No particular words or language must be used in denying a claim under the applicable language found in Article V. 1 (a) of the 1954 Agreement as long as the communication leaves no reasonable doubt as to the validity of such notice. The notice of disallowance to which Petitioner objects was in writing, bearing the initials and position of the Carrier official with whom the claim was initially filed. Furthermore, said notice stated the reason for declination and was duly filed within the prescribed time limitation. Therefore, we must conclude that Carrier did not violate Article V of the 1954 Agreement as alleged by Petitioner.

As to the merits of the instant dispute, Petitioner primarily relies on an affidavit dated May 22, 1962, signed by three B&B employes, which Carrier states that it did not receive until January 26, 1963, approximately eight months after the final letter of denial on the property.

Carrier categorically denies that any employe cut metal for more than the one or two hour periods permitted under the provisions of Rule 56–II(d) of the Agreement on any of the specified dates of claim. Carrier offered into evidence a summation of investigation notes taken from daily work reports of the foremen and supervisors involved to support its position.

Analysis of the conflicting evidence offered by the parties in support of their respective positions discloses an irreconcilable conflict of facts, and it is well established that the burden of proof rests with the Claimant in such disputes. Awards 15597 and 15765.

Even if the affidavit offered by Petitioner is considered timely, this Board has neither the authority nor competence to properly weigh such conflicting evidence presented during the handling on the property. Therefore, we must conclude that Petitioner has failed to establish facts sufficient to require or permit a finding that Carrier violated the provisions of Rule 56–II(d) on the specified dates of claim. Awards 15597, 15588, 14947 and others. Accordingly, the Claim will be denied.

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; 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 21st day of March 1968.

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