



Award No. 16508

Docket No. MW-17151

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

LOUISVILLE & NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of building up frogs, switch points and/or other track material to the Hunt Brothers Welding Company and to the Conley Frog and Switch Company.

(2) The claim presented by General Chairman W. P. Gattis in his letter of February 3, 1966 to Division Engineer M. A. McGee should have been allowed as presented after Division Engineer M. A. McGee failed to render a decision thereon within the time limits set forth in Rule 26(a).

(3) Electric Welder T. L. Atchison and Electric Welder Helper E. B. Meredith each be allowed, in addition to payments received, an amount equal to the straight time rate of their respective positions from December 5, 1965 until the violations referred to above are discontinued.

EMPLOYEES' STATEMENT OF FACTS: Beginning on or about December 5, 1965, the Carrier assigned the work of repairing or rebuilding frogs, switch points and other track materials by the welding process to the Hunt Brothers Welding Company and to the Conley Frog and Switch Company, whose employees hold no seniority rights under the Agreement. Said frogs, switch points and other track materials are removed from the track by maintenance of way employees and are subsequently shipped to the above named companies. After the frogs, switch points and other track materials are repaired or rebuilt, they are returned to the Carrier and reinstalled in the track by maintenance of way employees.

The claimants have established and hold seniority rights in their respective classes in the Welding Subdepartment. They are fully qualified and properly equipped to perform all work of the character here involved.

Stores Department from all over the System. He further called the General Chairman's attention to the fact that the General Chairman's letter filing the claim had been referred to the Chief Engineer, and that it had been declined within the time limit period.

Copies of the above referred-to correspondence and subsequent correspondence are attached as Carrier's Exhibits AA through HH.

A copy of the current working rules agreement is on file with the Third Division and by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about December 5, 1965, Carrier contracted out work of rebuilding frogs. Organization protested the contracting out of this work as a violation of the parties' Agreement by a claim filed with Division Engineer McGee on February 3, 1966. Division Engineer McGee referred the claim to Chief Engineer Clark by letter dated February 7, 1966. The latter denied the claim on February 16, 1966. The claim was not denied by Division Engineer McGee within the 60 day period stipulated in Rule 26(a) although Chief Engineer Clark had so done within that period.

Organization argues that it submitted the claim to the representative designated by the Carrier under Rule 26(a) and was entitled to a reply from him within 60 days of submission. Failure of the designated agent to reply by that time must result in granting the claim. On the merits, Organization contends that the rebuilding of frogs is welders' work and reserved to them under Rule 38(b).

Carrier asserts that the claim was properly referred to the Chief Engineer and was properly and timely denied by him. On the merits, it argues that Rule 38(b) permits the contracting of rebuilding frogs when as here, its employees lack the equipment on which it can be done. Additionally it asserts that its contracting out of the work was justified under Rule 2(f) due to its lack of necessary equipment and the unavailability of electric welders on layoff to do the work.

Rule 26(a) specifies that claims must be presented . . . "to the officer of the Carrier authorized to receive same . . ." In a letter dated May 13, 1960, Carrier's Director of Personnel confirmed an agreement with the Organization that claims

" . . . must initially be filed with the Division Engineer. Having been declined by him, they should then be appealed to the Chief Engineer and the Director of Personnel in that order."

When Organization filed its claim it did so as required by the May 13, 1960 letter. In so doing it had a right to assume that the claim would be responded to by the Division Engineer. Then if there was a denial, it would have had a right to reformulate its claim for appeal to the Chief Engineer who was authorized by the Carrier to handle appeals from the Division Engineer. This right of appeal to which the parties had agreed, has been abrogated by Carrier's action in referring the claim to the Chief Engineer, without a denial by the Division Engineer.

Carrier under Rule 26(a) had the right to authorize who would receive claims. It agreed with Organization as to who would receive claims and on appeal procedure thereafter. Carrier was obligated under this Agreement to have the Division Engineer decline the claim within the time provided. It had no authority to refer the claim to a higher official and thus deny Organization's right to a specifically agreed upon level of appeal. (Hamilton 14031.) Nor did the Chief Engineer have the right to deny the claim at this stage under the terms of the May 13, 1960 letter. (Dorsey 11374.)

In the instant case the appropriate designated officer of the Carrier failed to disallow the claim within the time limits specified by Rule 26(a). Accordingly the claim must be allowed as presented. There is thus no need to consider the merits.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1968.