



Award No. 16573

Docket No. MW-17276

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

NORFOLK AND WESTERN RAILWAY COMPANY

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

(1) The Carrier violates and continues to violate the Agreement when it refuses to pay Welder Helper Lacy M. Lafferty the welder helper's rate of pay as provided for within the Norfolk and Western Agreement.

(2) The General Manager defaulted when he failed to comply with the provisions of Rule 34 in his disallowance of the claim which was appealed to him within a letter dated April 22, 1966.

(3) Because of the violations referred to in Parts (1) and (2) of this claim, the Carrier be required to allow the claim as presented, namely that Welder Helper Lafferty be paid the difference between what he should have been paid at the welder helper's rate under the Norfolk and Western rates of pay schedule and what he was paid at the welder helper's rate under the agreement with the former Virginian Railroad, retroactive to sixty (60) days from April 5, 1966.

EMPLOYEES' STATEMENT OF FACTS: The Carrier bulletined a welder helper's position and, upon receiving no bids on said position, it promoted a former Virginian Railway section laborer, Claimant Lafferty, thereto. Instead of paying Claimant Lafferty the welder helper's rate of pay as provided for within the Norfolk and Western Maintenance of Way Employees' Agreement, it paid him the lower rate provided for within the former Virginian Maintenance of Way Employees' Agreement.

On April 5, 1966, a claim was filed with Roadmaster Terry requesting that, beginning sixty (60) days prior to April 5, 1966, the claimant be paid the difference between what he was then receiving at the former Virginian rate of pay for welder helpers and what he should have received at the Norfolk and Western welder helper's rate of pay.

Carrier declined the claim.

OPINION OF BOARD: The record discloses that this claim was, after having been timely rejected by Carrier's Roadmaster, appealed to the General Manager on 22 April, 1966, but was not denied by him until 5 August, 1966. Section 1(a), Rule 34, places a time-limit of 60 days on such denials and, clearly, Carrier failed to meet this requirement. Therefore, the Carrier is liable to the date of the late disallowance without regard to the merits but subsequent to the date of the late disallowance the case should be considered on its merits. See National Disputes Committee Decision No. 16.

With regard to the facts on the merits, Carrier advertised a new position of welder helper by bulletin but after receiving no applications, appointed claimant, a former Virginian Railway section laborer who held no seniority as a welder helper. Claimant was compensated under the Virginian-Maintenance of Way Agreement instead of the Norfolk and Western — Maintenance of Way Agreement which latter agreement provided for a higher rate.

The dispute here centers on the words "new employees" used in the 27 May, 1960, Implementing Agreement which agreement resulted when the former Virginian Railway was merged with the Norfolk and Western Railway prior thereto. Sections 6 and 7 of said agreement provide the following:

"Section 6. Except as provided for in this Implementing Agreement, Norfolk and Western and former Virginian employees will work under the rates of pay rules and working conditions of their respective schedule Agreements.

Section 7. New employees will be subject to the Norfolk and Western — Brotherhood of Maintenance of Way Employees' Schedule Agreement."

The Organization contends that a "new employee" is not only a new hiree but in addition, that a "new employee" is also one who acquires seniority in a classification where he had not previously held seniority.

With the Organization's interpretation, we cannot agree. It is a well founded and recognized rule of contract construction that words must be given their ordinary and popular meaning. See Award 7343. We cannot find, in the language of Sections 6 or 7, that the parties used the words "new employees" to mean anything other than their common and popular meaning, i.e., new hirees. Therefore, the claim from the date of the late denial, as hereinbefore mentioned, must be denied.

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 Carrier violated the time-limit procedural rules but did not violate the substantive rules of the Agreement.

AWARD

Claim sustained in part and denied in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.