

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Delaware and Hudson 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 Bridge and Building Department forces to paint signal cabins, signals, grade crossing gates, telephone boxes, switch machines and battery boxes beginning May 10, 1984 (System File 24.84).

(2) Director Labor Relations and Human Resources M. Melius failed to disallow the claim (appealed to him under date of October 1, 1984) as contractually stipulated within Rule 35(e)2 and 4.

(3) As a consequence of either or both (1) and/or (2) above, Mr. R. Robinson shall be allowed

'payment equivalent to all time signal dept.
spends painting and performing M/W work.'

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant established and holds seniority as a B & B foreman in the Bridge and Building Subdepartment of the Maintenance of Way and Structures Department at Oneonta, New York. Beginning on May 10, 1984, Carrier assigned to employees in its Signal Department the work of cleaning, preparing and painting various signal cabins, approach signals, dwarf signals, highway and road crossing gates, telephone boxes, home signals at interlockings, switching machines and battery boxes, work which the Organization claims accrues to members of its craft, and, specifically, Claimant herein.

Although the parties presented argument and evidence on the merits of the case, we find that resolution of a procedural issue is dispositive of this case. A claim dated May 10, 1984, was presented to and denied by the Carrier under date of June 12, 1984. Thereafter, the claim was timely presented by the Organization through the various stages of appeal up to and including Carrier's highest appellate officer, the Director of Labor Relations and Human Resources, who, under date of October 1, 1984, was presented with the Organization's letter of appeal. Carrier responded by letter dated November 30, 1984, stating as follows:

"In response to your request for conference discussion dated October 1, 1984, received October 4, 1984, regarding claim in behalf of Raymond Robinson for payment of all time the Signal Department spends painting and performing Maintenance of Way work, beginning May 10, 1984 and continuing until resolved.

In response to the above, this is to advise that we will be available to meet with you on January 9, 1985. Without prejudice to our earlier position as to the location for conference, this to advise that we will meet with you at 2:00 p.m. in Colonie, New York.

With respect to the above claim, it is understood and agreed that time limits are waived pending conference discussion."

The Organization contends that Carrier failed in its letter to disallow the claim and/or timely and properly obtain an extension of the time limits within which to do so. We agree. Rule 35(e)(2) stipulates that in each instance in which a claim is disallowed, the Carrier shall, within sixty (60) days from the date such claim is filed, give written notification of the reason for such disallowance, and if not so notified, the claim will be allowed as presented. Rule 35(e)(4) provides that the written notification requirement just described "shall govern in appeals taken to each succeeding officer." In the instant case, the claim was appealed to the Director of Labor Relations and Human Resources on October 1, 1984. If he wished to disallow the claim, he was contractually obligated to notify the Organization in writing of the reasons for such disallowance. We find nothing in Carrier's November 30, 1984 letter which could reasonably be construed as a notice of claim disallowance as required by Rule 35(e)(2). While the letter clearly states that it was "...understood and agreed that time limits are waived pending conference discussion," the Organization argued on the property without refutation that the Carrier did not timely or properly obtain its concurrence to extend the time limits, and that its unilateral assertion on the 60th day was improper.

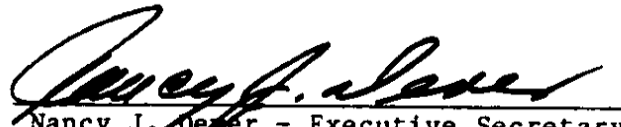
While we are reluctant to reach a decision on the basis of a procedural defect rather than on the merits of a claim, we also recognize that the time limitations and provisions for written notice are mandatory procedural requirements. Since the Carrier did not comply with the provisions of Rule 35, the claim will be allowed as presented. See Third Division Awards 9492, 9554, 10576, 12233, 12472.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.