

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail).

Case No. 1

Claim on behalf of C&S Maintainer S. R. Hurt and Maintainer Test E. C. Jones:

(a) That on or about June 26 and June 27, 1984 it violated the CRC/BRS Agreement of Sept. 1, 1981 Agreement when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of at least two days duty for two employees, at West Aden, Ill. M.P. 99.7.

(b) That claimant C&S Mtr. S. R. Hurt and Mtr. Test E. C. Jones be paid 8 hours each for each day or for a total of 16 hours at his own respective time and one half rate because of this capricious, flagrant and blatant violation of the Sept. 1, 1981 Agreement, especially the Scope and Classification Rules. Carrier File SD-2151-BRS File-6654-CR

Case No. 2

Claim on behalf of C&S Maintainer M. M. Mayfield and C&S Maintainer Test E. C. Jones:

(a) That on or about June 7 - June 26, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two (2) duty for two (2) employees, at Greenup (E.up) Mile Post 117.7.

(b) That claimants C&S Mtr. M. M. Mayfield and C&S Mtr. Test E. C. Jones be paid eight (8) hours each for each day or for a total of sixteen (16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SG-2125 BRS File 6655-CR

Case No. 3

Claim on behalf of C&S Maintainer M. M. Mayfield and C&S Maintainer Test E. C. Jones:

(a) That on or about June 7 - June 26, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of now less than two (2) duty for two (2) employees, at Montrose, Ill. Mile Post 131.1.

(b) That claimants C&S Mtr. M. M. Mayfield and C&S Mtr. Test E. C. Jones be paid eight(8) hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SG-2154 BRS File 6657-CR

Case No. 4

Claim on behalf of C&S Maintainer S. R. Hurt and C&S Maintainer Test E. C. Jones:

(a) That on or about between June 8 and July 27, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two(2) duty for two(2) employees, at West Farrington, Ill. Mile Post 81.7.

(b) That claimants C&S Mtr S. R. Hurt and C&S Mtr. Test E. C. Jones be paid eight(8) hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SD-2156 BRS File 6959-CR.

Case No. 5

Claim on behalf of C&S Maintainer S. R. Hurt and C&S Maintainer Test E. C. Jones:

(a) That on or about June 8 and July 27, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two(2) duty for two(2) employees, at East Marshall, Ill. Mile Post 89.7.

(b) That claimants C&S Mtr. S. R. Hurt and C&S Mtr. Test E. C. Jones be paid eight(8)hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SD-2158 BRS File 6661-CR

Case No. 6

Claim on behalf of C&S Maintainer H. Sams and C&S Maintainer Test H. L. Goen:

(a) That on or about June 8 - July 27, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two(2) duty for two(2) employees, at Effingham, Ill. Mile Post 140.6.

(b) That claimants C&S Mtr. H. Sams and C&S Mtr. Test H. L. Goen be paid eight(8) hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatnat (sic) violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SD-2160 BRS File 6663-CR

Case No. 7

Claim on behalf of C&S Maintainer H. Sams and C&S Maintainer Test H. L. Goen:

(a) That on or about June 8 - July 27, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two(2) duty for two(2) employees, at Funkhouser, Ill. Mile Post 144.9.

(b) That claimants C&S Mtr. H. Sams and C&S Mtr. Test H. L. Goen be paid eight(8) hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SD-2162 BRS 6665-CR

Case No. 8

Claim on behalf of C&S Maintainer S. R. Hurt and C&S Maintainer Test E. C. Jones:

(a) That on or about August 6, 7, and 8, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two(2) duty for two(2) employees, at Macksville, Ind. Mile Post 75.3.

(b) That claimants C&S Mtr. S. R. Hurt and C&S Mtr. Test E. C. Jones be paid eight(8) hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SD-2164 BRS File 6667-CR

Case No. 9

Claim on behalf of C&S Maintainer M. E. Swander and C&S Maintainer Test E. C. Jones:

(a) That on or about August 10, 13 and 14, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two(2) duty for two(2) employees, at Terre Haute, Ind. Mile Post 68.8.

(b) That claimants C&S Mtr. M. E. Swander and C&S Mtr. Test E. C. Jones be paid eight(8) hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SD-2166 BRS File 6668-CR

Case No. 10

Claim on behalf of the C&S Maintainer S. R. Hurt and C&S Maintainer Test E. C. Jones:

(a) That on or about August 14 and 15, 1984, the Company violated the CRC/BRS Agreement of Sept. 1, 1981 when it allowed the duties that accrue to none other than those represented by the Brotherhood of Railroad Signalmen to be performed by other than those represented by the Brotherhood of Railroad Signalmen for a period of no less than two(2) duty for two(2) employees, at East Farrington, Ill. Mile Post 80.6

(b) That claimants C&S Mtr. S. R. Hurt and C&S Mtr. Test E. C. Jones be paid eight(8) hours each for each day or for a total of sixteen(16) hours each, at his respective time and one half rate because of this capricious, flagrant and blatant violation of the Scope and Classification Rules of the Sept. 1, 1981 CRC/BRS Agreement. Carrier File SD-2168 BRS File 6671-CR."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of this dispute and filed a Submission.

The matter before the Board represents the consolidation of ten separate claims, all of which protest the subcontracting by the Carrier of the construction of small "bungalow" buildings used to house relays and other electronic equipment. The buildings each were adjacent to a microwave tower, each of which was constructed as part of a communications system for radio transmissions and signal controls.

At the outset the Board must consider a procedural issue. The Organization contends that the claims must be sustained because in denying the claims initially the Carrier failed to comply with Rule 4-K-1(b). The Rule 4-K-1(a) states:

"4-K-1. (a) All grievances or claims other than those involving discipline must be presented, in writing, by the employee or on his behalf by a union representative, to the Supervisor C&S (or other designated supervisor), within sixty (60) calendar days from the date of the occurrence on which the grievance or claim is based. Should any such grievance or claim be denied, the Supervisor shall, within sixty (60) calendar days from the date same is filed, notify whoever filed the grievance or claim (employee or his representative) in writing of such denial. If not so notified, the claim shall be allowed as presented." (emphasis added)

The Organization points out that while the claims were submitted to the Supervisor C&S, they were denied by the District Engineer.

In response to procedural contentions presented by the Organization, the Carrier argues that the disallowance of the claims by the Division Engineer was timely notification from the Carrier that the claims were denied. Moreover, they assert that at no time have the employees alleged that notification by the Division Engineer was prejudicial to the Claimants. It is also their position that the claims were invalid from their inception since they were vague. Therefore, they argue that any action or inaction by the Carrier under Rule 4-K-1(a) cannot validate an already invalid claim.

It is the conclusion of the Board that the claims must be sustained. The Carrier clearly violated Rule 4-K-1(a) which, in plain and unambiguous terms, requires that the Supervisor C&S shall, if a claim is to be denied, notify the presenter within 60 days. The fact of the matter is the Supervisor C&S did not deny the claims at all, let alone within sixty (60) days.

The Carrier argued that the claims were, as a threshold matter, invalid because they were vague. However, we do not find the claims invalid on their face. They were clear enough to adequately put the Carrier on notice as to what actions by the Carrier the Organization believed violated the Agreement.

The fact that another official denied it within 60 days is irrelevant under the clear and specific language of this rule. On the basis of the specificity of the rule this case is distinguished from those relied on by the Carrier since it is apparent the rules there only required denial by the "Carrier." It should also be stated that having a claim denied by the wrong official is not an insignificant error. It is no less significant than the Union presenting an initial claim to the wrong Carrier officer. The Board's case law is legion that such an error on the Organization's part compels dismissal of a claim and there is no reason under these facts and this contract language that the time limit rule should't be enforced with equal resolve when the shoe is on the Carrier's foot.

The Carrier also argued that no prejudice was shown by the error. However, this is not relevant consideration where a rule specifies the remedy for default. In this case the rule leaves no doubt as to the remedy. The "claim shall be allowed as presented."

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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