

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Signal Department employes instead of Bridge and Building Department employes to paint battery boxes, relay cabins, signal poles, etc., in the vicinity of Taylor, Pennsylvania beginning August 22, 1984 (System Case #6-85).

(2) Assistant Director-Labor Relations J. T. Delano failed to disallow the claim (appealed to him under date of February 5, 1985) as contractually stipulated within Paragraphs 2 and 4 of Rule 35(e).

(3) As a consequence of either or both (1) and/or (2) above, beginning August 22, 1984, Mr. J. Juliano shall be allowed:

'all straight time and overtime, to be confirmed through C&S dept. time sheets (daily work reports and payroll records.)'

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.

As Third Party in Interest, the Brotherhood of Railroad Signalmen, was advised of the pendency of this dispute and filed a Submission with the Division.

By letter of August 30, 1984, the Organization filed a claim alleging Carrier violation of Rule 45, Paragraphs 7 and 10, wherein Maintenance of Way work was assigned to Signal Department forces. It is the position of the Organization that B&B employees have Agreement rights to the painting of signal equipment.

The Carrier denied any violation of the Agreement pointing to the June 4, 1984 letter from the Chief Engineer to the District Representative regarding the painting of signal equipment. However, Carrier's letter of denial dated May 20, 1985, denied the appeal of the Organization dated February 5, 1985.

The Organization argues that Carrier violated Rule 35 which states in pertinent part:

"All claims...must be presented in writing...to the officer of the Carrier..., within 60 days.... Should any such claim...be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim...in writing of the reasons for such disallowance. If not so notified, the claim ...shall be allowed as presented...."

This Board has carefully reviewed the record. The Carrier's letter of denial is in violation of the 60 day time limits established. The dates on the letters are probative evidence of the violation.

Carrier argues that an understanding was entered into wherein the time limits for the Claim would be extended. We have searched the record for evidence to support this affirmative defense. Carrier's representative to the discussion of March 14, 1985, in North Billerica submitted no supporting affirmation. The Board finds no evidence of a mutual agreement to extend the time limits. In the absence of such evidence, the extension by the Carrier was unilateral and violative of the Agreement (Third Division Award 19974).

The Board holds that the Carrier violated the Agreement and sustains parts (2) and (3) of the Claim on procedural grounds without reaching the merits. The Carrier's liability ceased on May 20, 1985, the date of the late denial (Third Division Awards 26329, 24269; Fourth Division Award 4588).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.