

PUBLIC LAW BOARD NO. 2960

AWARD NO. 118
CASE NO. 156

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to bulletin the foreman's position on Surfacing Gang 6241. (Organization File 6T-4538; Carrier File 81-84-153)
- (2) The Claims presented on October 22, 1983 and September 13, 1983, to Assistant Division Manager-Engineering D. E. Swenumson by Claimant R. L. Shaw are allowable as presented because said claims were not disallowed by Mr. Swenumson in accordance with Rule 21.
- (3) Rule 21 was further violated when the Carrier's highest appellate officer failed to notify the General Chairman of the reasons for disallowing his appeal in a letter dated June 27, 1984.
- (4) As a consequence of either 1, 2, 3 or all of the above, Claimant R. L. Shaw shall be allowed the per diem allowance claimed in his initial two letters of appeal.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of

the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are undisputed. On July 5, 1983, a surfacing gang Foreman's position was vacated and was subsequently filled without bulletining by Mr. H. A. Pope, who possessed a Foreman date senior to Claimant's. Mr. Pope was regularly assigned to the Foreman position of another surfacing gang, which was, pending his return, filled by an employee who had no Foreman seniority at all. On September 13, 1983, the Claimant submitted to the Division Engineer an expense claim and attached it to a letter protesting the Carrier's failure to bulletin the positions in question and seeking the expense allowances that accrue to foremen on gangs such as those in question. On October 22, 1983, a similar procedure was followed by the Claimant.

On January 16, 1984, the Division Manager responded to both of the Claimant's inquiries. On March 6, 1984, the claim was appealed to the Division Manager and denied May 2, 1984. On August 16, 1984, after the claim had been appealed to the highest level the Carrier denied the claim without stating the reasons.

At the outset, the Organization argues that the claim should be allowed as presented since the Division Manager failed to respond within 60 days. In this respect, the Board finds that a strict application of the time limit rule is

inappropriate in view of the fact that the Division Engineer wasn't the appropriate person to whom the claim should have been directed.

Beyond this, however, there are several technical violations of the Agreement. For instance, there is no dispute the positions in question were not bulletined or that the Carrier failed to set forth the reasons for its denial at the highest level.

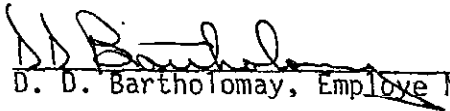
In the final analysis, the real issue is the appropriate damages. The problem, however, is that the Claimant, even though the senior employe protesting the clear failure of the Carrier to bulletin the position, has not demonstrated that he was monetarily damaged by such failure. For instance, he has not claimed that he suffered any reduction in base wages nor demonstrated that he suffered, as did the Claimant in Award No. 95 of this Board, additional expenses by not being assigned to the position. Apparently, instead, he is simply seeking expense allowances carte blanche without respect to whether the Carrier's failure caused him to incur any such expenses. Thus, a monetary award is inappropriate and it is appropriate only to technically sustain the claim and offer a stern warning to the local Carrier officials to comply with Rule 16 (b). They should also be reminded that we have not nor would we hesitate in the future to grant monetary claims to the extent that the failure to bulletin a position causes a wage loss or causes the employe to incur contractually covered expenses they would not otherwise have incurred.

AWARD

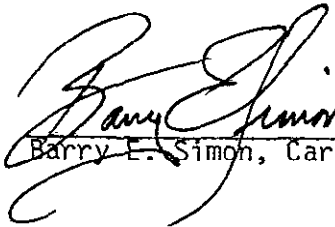
Claim sustained to the extent indicated in the Opinion.



G. I. Vernon, Chairman



D. D. Bartholomay, Employee Member



Barry E. Simon, Carrier Member

Dated: Oct 2, 1966