

PUBLIC LAW BOARD NUMBER 1837

Case Number 46
(MW-BRS-76-18)

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employes

STATEMENT OF CLAIM:

1. The Carrier has violated the Current Scheduled Agreement dated April 1, 1951, of the Wheeling and Lake Erie District particularly Article V, Section 1-A of the August 21, 1954 Agreement when failing to respond within time limits of a grievance and/or time claim, presented by D. L. Godwin on account he was not used to maintain and operate the Water Pollution Control Facility at Brewster, Ohio, on March 2, 6, 9, 13, 16, 20, 23, 27, 30, April 3, and 6, 1976. (Case MW-BRS-76-18)

2. Claimant D. L. Godwin be compensated a total of thirty-four (34) hours pay at the respective rate of a carpenter for violation on March 2, 6, 9, 13, 16, 20, 23, 27, 30, April 2, and 6, 1976.

FINDINGS:

This Board, upon the whole record and all evidence, finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction over the dispute involved herein.

OPINION:

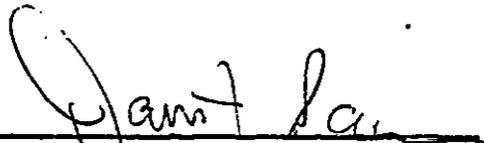
Claimant in this case is classified as a Carpenter in the Carrier's Bridge and Building Sub-department and performed, inter alia, work related to the maintenance, testing and operation of the Carrier's "Water Pollution Plant" at Brewster, Ohio. For a period of time in 1976 the Carrier used employee(s) from the Motive Power Department to perform duties relative to the Water Pollution Plant on the specific dates set forth in the Claim. On April 7, 1976 the Claimant initiated the Claim set forth herein in writing to the appropriate official of the Carrier. Sixty days later, on June 17, 1976 the Claimant advised the Organization that no response had been forthcoming from the Carrier. The Organization then moved to demand satisfaction of the Claim account of Carrier's failure to meet the response requirement of Article V, Section 1-(A) of the controlling Agreement which states that:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

We find no error in the Organization's basis for enforcing this provision, which clearly and unambiguously grants the demanded regress if a response to a grievance is not forthcoming within 60 days. Under the circumstances, we find proper the enforcement of the Claim as written.

AWARD:

Article V, Section 1 (A) of the August 21, 1954 Agreement as relates to time limits was violated by the Carrier. Claim is granted.


James F. Searce
Neutral Member


E. N. Jacobs, Jr.
Carrier Member


William E. LaRue
Employee Member

Dated March 24 1982 at Philadelphia Pa