

Award No. 8
S.B.A. Case No. 8
(Third Division Docket No. 8963)

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT
OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) When the Carrier failed to disallow the claim presented to B&B Supervisor A. E. Acord in a letter dated May 19, 1955, and signed by each member of B&B Gang 1218, the Carrier was obligated, under the provisions of Article V - 1 (a) of the August 21, 1954 Agreement, to allow the claim as it was presented in the aforesaid letter.
- "(2) The Carrier's failure and refusal to meet the obligation referred to in Part (1) of this claim is a violation of Article V - 1 (a) of the August 21, 1954 Agreement.
- "(3) The Carrier be required to allow the claim as it was presented to B&B Supervisor Acord in a letter dated May 19, 1955.

(Claim filed on May 19, 1955, relates to the installation of two 18-inch corrugated pipes under the Carrier's tracks near Mile Post 3 on the Malad Branch near Chase Spur by other than B&B employees)"

FINDINGS: Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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

This Board has jurisdiction over the dispute involved herein.

The very fact in dispute, whether B&B Supervisor, A. E. Acord, actually received the employee's claim and letter dated May 19, 1955, is neither proved nor disproved.

Acord is the one person, and probably the only one, who knows whether this original claim was ever received. The record is barren of any testimony, affidavit, written statement or verbal statement by Acord.

One of Mr. Acord's superiors denies that Mr. Acord ever received it but he has no firsthand knowledge of the facts and he doesn't even give us the benefit of any hearsay statements quoting Mr. Acord.

Likewise on the organization's side, we have only a claim by one of its officers saying the claim was filed with Mr. Acord. We are satisfied that a claim was typed up, and dated May 19, and signed by 13 employees. There is a copy in existence, but what was done with it? Was it written on or about May 19? Was it mailed? Just to A. E. Acord, Salt Lake City, Utah, without street address as would appear in the heading? Who wrote it? Who mailed it? Where? Was it ever actually mailed or was it delivered? If one of the 13 signers properly mailed or delivered it, why doesn't he say so? It certainly wasn't registered but we understand this wasn't required.

Likewise the organization spokesman who presses the claim asserts that the claim was filed, but he cannot give us firsthand knowledge, and he doesn't give us the benefit of any direct quotes from the person who supposedly mailed the letter.

There is a failure of evidence in this case.

The ship is in a calm with no wind in its sails. We have no alternative but to leave it where we found it.

AWARD:

The claim is denied.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty
Marion Beatty, Chairman

(s) A. J. Cunningham
A. J. Cunningham, Organization Member

(s) A. D. Hanson
A. D. Hanson, Carrier Member

Omaha, Nebraska
June 10, 1960