



Award No. 2185
Docket No. 2167

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

Referee Jacob Seidenberg

PARTIES TO DISPUTE:

**RAILWAY PATROLMEN'S INTERNATIONAL UNION,
AFL-CIO**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: (a) That the carrier's action in refusing to bulletin a temporary position known to be of more than thirty days duration was violative of rules of agreement.

(b) That the carrier's failure to comply with Article VI, Section 9(a), is also violative of rules of agreement.

(c) That claimant, Special Agent J. C. Reber, shall be compensated for each and every day including overtime that a Special Agent junior in seniority was assigned to the temporary position commencing with July 28, 1964 and continuing to and including September 15, 1964.

EMPLOYES' STATEMENT OF FACTS: For many years the carrier in this dispute, the Atchison, Topeka and Santa Fe Railway Company, has operated daily a train or trains as the occasion required, commonly referred to as Del Mar race track trains, between Los Angeles and the Del Mar Race Track and return during the racing season. During the year 1964 the race season started on July 28 and ended on or about September 15. The train did not operate on Sundays or the day after Labor Day.

Almost since the inception of the service the carrier has assigned police officers (Special Agents) to preserve order on the train or trains during the race season.

In previous years the carrier has bulletined a temporary position of Special Agent to ride the trains to and from the race track to preserve order and protect the traveling public. The carrier's Special Agents who were desirous of working such position were permitted to bid on position and assignment was made according to seniority as provided by rules of existing agreement. Commencing with date of July 28, 1964 the carrier arbitrarily removed Special Agent W. F. Lindner from position 2371 at San Diego, Calif. and assigned him to ride the race track train which he did until September 15, 1964, and time claims were submitted by the claimant as follows:

July 28, 196410 A.M. to 10 P.M. 8 hrs. regular time—4 hours overtime
July 29, 196410 A.M. to 10 P.M. 8 hrs. regular time—4 hours overtime

July 30, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
July 31, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 1, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 3, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 4, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 5, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 6, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 7, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 8, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 11, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 12, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 13, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 14, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 15, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 17, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 18, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 19, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 20, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 21, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 22, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 24, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 25, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 26, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 27, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 28, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 29, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
August 31, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 1, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 2, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 3, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 4, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 5, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 7, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 9, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 10, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 11, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 12, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 14, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime
Sept. 15, 1964	.....10 A.M. to 10 P.M.	8 hrs. regular time—4 hours overtime

On date of July 24, 1964 the organization representatives met with Mr. Spier and Mr. Lower, Assistants to carrier's General Manager, in carrier's Santa Fe office. Both Mr. Spier and Mr. Lower agreed that under rules of agreement the position of riding the race train should be bulletined and that failure to do so would constitute a violation of the agreement. However, the position was not bulletined and claim was initiated and progressed as follows:

"San Bernardino
September 10, 1964

"Mr. J. C. Reber:

"With reference to daily reports submitted by you, dated from July 28th to August 31st inclusive, claiming time on the Del Mar Race Train, not bulletined in accordance with Article Four, Section one of the current agreement.

"This to advise you that I am denying payment of all time claims mentioned above.

"R. F. Burnette
B

"cc: Mr. P. M. Genrich"

"San Bernardino, September 22, 1964

"Mr. J. C. Reber:

"With reference to your daily work reports from September 3rd through September 15th, inclusive showing time claim for position on Del Mar Train. This to advise that I am declining payment of these claims.

"R. F. Burnette
B

"cc: Mr. P. M. Genrich
"cc: Mr. C. E. McGrath"

"San Bernardino, October 22nd 1964

"Mr. J. C. Reber—SanBdno

"Please refer to my letter of September 10, 1964 declining your claims from July 28th to August 31st, inclusive, which were received in this office September 7, 1964, claiming time on the Del Mar Race Train account not bulletined in accordance with Article IV, Section 1 of the current agreement.

"My reason for declining the claims is that they are not supported by the agreement.

/s/ R. F. Burnette
R. F. Burnette

"cc: Mr. P. M. Genrich"

"San Bernardino, October 22nd, 1964

"Mr. J. C. Reber—SanBdno

"Please refer to my letter of September 22, 1964 declining your claims from September 3rd through September 15th, inclusive, claiming time for position on Del Mar Race Train.

"My reason for declining the claims is that they are not supported by the agreement.

/s/ R. F. Burnette
R. F. Burnette
B

"cc: Mr. P. M. Genrich"

"(letterhead omitted)

"San Bernardino, October 19, 1964

"Mr. P. M. Genrich
Superintendent Special Service
Atchison, Topeka and Santa Fe Railway Company
121 East Sixth Street
Los Angeles 14, California

"Dear Sir:

"Please accept this as an appeal of the decision of Division Special Agent R. F. Burnette in denying the claim of Joe C. Reber's time claim on the Del Mar Race Train.

"(a) Carrier failed and refused to advertise for seniority choice, position of Special Agent on the Del Mar Race Train.

"(b) Mr. Joe C. Reber shall now be compensated for one days pay and overtime worked each day commencing July 28, 1964 and continuing to and including September 15, 1964.

"(c) On July 28, 1964 Carrier established a regular position of Special Agent on the Del Mar Race Train, working between Los Angeles and Del Mar and return. It failed and refused to bulletin such position but in lieu thereof removed Mr. W. F. Lindner from his regular position at San Diego, position No. 2371, Special Agent with unassigned hours and placed him on the Special Agents position on the Del Mar Race Train from July 28, 1964 to and including September 15, 1964, this includes eight (8) hours each day plus approximately four and one-half (4½) hours overtime each Monday through Saturday.

"(d) Mr. Reber holds regular assignmet of Special Agent at San Bernardino and was available and willing to bid upon the position in question, which right was denied him by the Carriers failure and refusal to advertise this position.

"(e) It is my position that Article IV, Section 1, supports this claim and also is it supported by Article VI, Section 9a, by reason of Division Special Agent R. F. Burnette's failure to give reason in denying this claim.

"Yours truly,

/s/ Joe C. Reber
Joe C. Reber

"cc: Mr. R. F. Burnette"

"(letterhead omitted)

File 315-D
October 27, 1964

"Mr. J. C. Reber
President & General Chairman
Railway Patrolmen's International Union
787 Edgehill Road
San Bernardino, Calif.

"Dear Mr. Reber:

"This in reply to your letter of October 19th protesting denial of Special Agent Joe C. Reber's time claims on the Del Mar Race Track Specials:

"Mr. Reber's time claims for the period of July 28, 1964 to and including September 15, 1964 are declined for the reason that they are not supported by the Patrolmen's Agreement.

"There was no violation of Article IV, Section 1, by Division Special Agent R. F. Burnette since on October 22, 1964—well within the 60-day period following receipt of Mr. Reber's first claims on September 7th—he wrote him advising that the claims were declined because they were not supported by the schedule.

"Your truly
/s/ P. M. Genrich

"m
"cc: Mr. R. F. Burnette"

"(letterhead omitted)

"San Bernardino, November 2, 1964

"Mr. J. N. Landreth, General Manager
Santa Fe Ry. Co. Coast Lines
121 east Sixth Street
Los Angeles 14, California

"Dear Sir:

"Please accept this as an appeal of the decision of Supt't Special Service P. M. Genrich in denying the clame of Joe. C. Reber's time clame on the Del Mar Race Train.

"(a) Carrier failed and refused to advertise for seniority choice, position of Special Agent on the Del Mar Race Train.

"(b) Mr. Joe C. Reber shall now be compensated for one days pay and over time worked each day commencing July 28, 1964 to and including September 15, 1964.

"(c) On July 28, 1964 Carrier established a regular position of Special Agent on the Del Mar Race Train, working between Los Angeles and Del Mar and Return. It failed and refused to bulletin such position but in lieu thereof removed Mr. W. F. Lindner from his regular position at San Diego, position No. 2371, Special Agent with unassigned hours and placed him on the Special Agents position on the Del Mar Race Train from July 28, 1964 to and including September 15, 1964, this includes eight (8) hours each day plus approximately four and one half ($4\frac{1}{2}$) hours overtime each day Monday through Saturday.

"(d) Mr. Reber holds regular assignment of Special Agent at San Bernardino and was available and willing to bid upon the position in question, which right was denied him by the Carrier's failure and refusal to advertise this position.

"(e) It is my position that Article IV, Section I, supports this claim and also it is supported by Article VI, Section 9a, by reason Division Special Agent R. F. Burnette's failure to give reason in denying this claim.

"Yours truly,
/s/ Joe C. Reber
Joe C. Reber

"cc: Mr. P. M. Genrich"

“(letterhead omitted)

“November 18, 1964

41-EX-70

“Mr. Joe C. Reber, General Chairman,
Railway Patrolmen's Int'l. Union,
787 Edgehill Road,
San Bernardino, Calif.

“Dear Sir:

“Please refer to your four letters of November 2, 1964 and letter of November 15, 1964, presenting claims of Special Agents J. C. Reber, C. E. McGrath and R. D. Lay for additional compensation in connection with the Del Mar Race Train and Position No. 2371 at San Diego, California, July 28, to and including September 15, 1964.

“I have secured the facts in connection with these claims and should like to hold the file for discussion in conference prior to rendering a decision, with the understanding that the time limit will be suspended pending date of such conference.

“Please advise if this is satisfactory; if not, the claims are declined.

“Yours truly,

/s/ J. N. Landreth
L”

“December 19, 1964

“Mr. J. N. Landreth
General Manager
121 East Sixth Street
Los Angeles, California 90014

“Dear Sir;

“Referring to yours of November 18, 1964 under file 51-EX-70 covering clames presented by Special Agents J. C. Reber, C. E. McGrath, and R. D. Lay for additional compensation in connection with the Del Mar Race Train and Position No. 2371 at San Diego, California, July 28, to and including September 15, 1964.

“I am agreeable suspending the time limit for discussion of the above clames but feel that same should not be suspended further than March 1, 1965, please advise if this meets with your approval and also set a time and place for discussion.

“Yours truly,

/s/ Joe C. Reber”

“(letterhead omitted)

December 23, 1964
51-EX-70

"Mr. Joe C. Reber, General Chairman,
Railway Patrolmen's Int'l. Union,
787 Edgehill Road,
San Bernardino, Calif.

"Dear Sir:

"Please refer to your letter of December 19, 1964, reading:

"Referring to your of November 18, 1964 under file 51-EX-70 covering clames presented by Special Agents J. C. Reber, C. E. McGrath, and R. D. Lay for additional compensation in connection with the Del Mar Race Train and Position No. 2371 at San Diego, California, July 28, to and including September 15, 1964."

"I am agreeable suspending the time limit for discussion of the above clames but feel that same should not be suspended further than March 1, 1965, please advise if this meets with your approval and also set a time and place for discussion."

"I am agreeable to suspension of the time limit until not later March 1, 1965. I cannot at this time set a definite conference date but suggest that some time during January 1965, when you expect to be in Los Angeles, you call my office to determine if a mutually satisfactory date can be arranged."

"Yours truly,

/s/ J. N. Landreth
S"

"(letterhead omitted)

"February 15, 1965

"Mr. J. N. Landreth
General Manager
Santa Fe. Ry. Co.
121 East Sixth Street
Los Angeles, Calif. 90014.

"Dear Sir:

"Referring to mine of December 19, 1964 and yours of December 23, 1964 under file 51-EX-70, covering time clames of Special Agents J. C. Reber, C. E. McGrath, and R. D. Lay for additional compensation with the Del Mar Race Train and position No. 2371 at San Diego, Calif. July 28, to and including September 15, 1964.

"If it meets with your approval I would request the suspension of the time limit on the above clames until April 30, 1965, please acknowledge if this meets with your approval.

"Your truly,

Joe C. Reber.
/s/ Joe C. Reber"

“(letterhead omitted)

“February 19, 1965

51-EX-70

“Mr. J. C. Reber, Pres. and Gen. Chairman,
Railway Patrolmen's International Union,
787 Edgehill Road,
San Bernardino, Calif.

“Dear Sir:

“Please refer to your letter of February 15, 1965, asking that time limit be extended until April 30, 1965, on your appeal covering time claims of Special Agents J. C. Reber, et al, July 28 through September 15, 1964.

“I will consider that the time limit on your appeal will continue to run until April 30, 1965.

“Yours truly,

/s/ J. N. Landreth S”

“April 9, 1965

“Mr. J. N. Landreth
General Manager
Santa Fe. Ry. Co.
121 east 6th street
Los Angeles, Calif. 90014

“Dear Sir;

“Referring to various letters and ending with mine of February 15, 1965 and Yours of February 19, 1965 file 51-EX-70. Covering time clames of Special Agents R. D. Lay—C. E. McGrath and J. C. Reber. July 28 through September 15, 1964.

“I am now in a position to meet on the above so if you will please set a time and place as soon as possible and advise.

“Yours truly,

/s/ Joe C. Reber
Joe C. Reber”

“(letterhead omitted)

“April 16, 1965

51-EX-70

“Mr. Joe C. Reber, General Chairman,
Railway Patrolmen's Int'l. Union,
787 Edgehill Road,
San Bernardino, Calif. 92405

“Dear Sir:

“Your letter April 9, 1965 in connection with time claims of Special Agents R. D. Lay, C. E. McGrath and J. C. Reber, July 28 through September 15, 1964.

"I will be in a position to discuss these cases on either Monday or Tuesday of next week, at 10:00 a.m.

"Yours truly,

/s/ J. N. Landreth
S"

"(letterhead omitted)

"May 11, 1965
51-EX-70

"Mr. Joe C. Reber, General Chairman,
Railway Patrolmen's Int'l. Union,
787 Edgehill Road,
San Bernardino, Calif. 92405.

"Dear Sir:

"There was discussed in conference recently time claims in favor of Special Agents R. D. Lay, C. E. McGrath and J. C. Reber, July 28 through September 15, 1964, for additional compensation in connection with the Del Mar race train.

"As you were advised in our conference, the additional duties of riding the Del Mar race train were assigned to the occupant of Position No. 2371 at San Diego, California during the racing season, and during which period he also performed any necessary duties on his regular assignment.

"This was not a new position, permanent vacancy, or temporary vacancy of over 30 days as referred to in Section 1 of Article IV and there was, therefore, no violation of that article in assigning the work to the San Diego position.

"This will confirm my declination of the claims as set forth above.

"Yours truly,

/s/ J. N. Landreth
S"

"(letterhead omitted)

San Bernardino, Calif.
June 25, 1965

"Mr. W. L. More, Vice President
Santa Fe Ry Company
80 East Jackson Blvd.
Chicago, Illinois, 60604

"Dear Sir;

"This is an appeal of the decision by J. N. Landreth General Manager, Coast Lines his letter of May 11, 1965 in denying time claims for additional compensation in favor of Special Agents R. D. Lay, J. C. Reber, C. E. McGrath against the position of Special Agent on the Del Mar Race Train Specials, July 28, 1964 to end including September 15, 1964 from Los Angeles to Del Mar and return, Los Angeles Div. of Coast Lines.

"STATEMENT OF CLAIM: (a.) Carrier in violation of rules of agreement failed and refused to advertise for seniority choice the Position of Special Agent on the Del Mar Race Train specials, Los Angeles to Del Mar and return from July 28, 1964 to and including September 15, 1964. Article in violation being Article IV, section 1.

"Article IV, section 1 reads; Temporary vacancies, unless known to be of over thirty (30) days duration, and new positions of indefinite duration may be filled without regard to seniority and will not be advertised until the expiration of thirty (30) days. Other new positions and permanent vacancies or temporary vacancies of over thirty (30) days known duration that are to be filled will be promptly bulletined to employees holding seniority in the class in which they occur.

"Carriers placing train service in use to and from the Del Mar track, between Los Angeles and Del Mar for the 1964 Race season from July 28, 1964 to and including September 15, 1964 establish fact they know Race season to be fifty (50) calendar days, well over thirty (30) days known duration under Article IV, section 1.

"Special Agents R. D. Lay, J. C. Reber, C. E. McGrath all hold seniority on the Los Angeles Div. of Coast Lines as Special Agents on regular assigned positions.

"b.) Claimant's R. D. Lay, J. C. Reber, C. E. McGrath shall be now be compensated for each and every day this position on Del Mar Race Specials of Special Agent work @ eight hours, regular time, and four (4) to eight (8) hours @ time and one half, overtime rate, from July 28, 1964 to and including September 15, 1964 plus all expenses allowed.

"c.) Carrier was given notice that said violation was about to take place on the Del Mar Race Specials, namely the assigning of the position of Special Agent to train without advertising same for seniority choice on July 24, 1964 by J. C. Reber General Chairman of Railway Patrolmen's International Union, Local No.-24 in meeting with Mr. J. E. Spier Assistant to General Manager—Mr. Landreth, along with Mr. Lower, assistant to same. Meeting took place in the Santa Fe building, 6th & Main St. Los Angeles, Calif. in Spier's offices.

"Chairman Reber advised Officers of Carrier that assigning Spl. Agent W. F. Lindner headquartered at San Diego to the position of Spl. Agent on the Del Mar Race Specials, July 28, 1964 to and including September 15, 1964 from Los Angeles to Del Mar and return without placing said position for seniority choice was violation of article IV, section 1 of agreement. Both Spier and Lower were in agreement with Reber that failure to bulletin position of Special Agent on the Del Mar Race Specials would be violation of rules of agreement, further Spier said he would handle violation and see to it that position was properly bulletined at once.

"Both Spier and Lower entered into verbal agreement with Reber that position of Special Agent on Del Mar Race Specials was covered in article IV, section 1 and had to be posted for seniority (bid) choice. These officers failed to protect agreement as agreed and position never placed for seniority choice.

"d.) July 28, 1964 Carrier did establish the position of Special Agent on the Del Mar Race Train Specials, Los Angeles to Del Mar and return from July 28, 1964 to and including September 15, 1964 by failing and refusing to bulletin said position for seniority choice according to rules of agreement did therefor in lieu thereof remove W. F. Lindner from his regular position of Special Agent at San Diego, position No.-2371 and place him on the position of Special Agent on the Del Mar Race train Specials, assigning him to said position from July 28, 1964 to and including September 15, 1964 and this position worked eight (8) hrs at regular time, four (4) to eight (8) hrs at overtime (rate @ time and one half) each day of the 1964 Race season. Position worked on expenses throughout the Race season. Wages paid out, approx \$895.64 in regular time rate, approx \$803.78 overtime rate, approx \$500.00 in expenses.

"e.) Mr. J. E. Spier did after assigning of Special Agent W. F. Lindner to the Del Mar Race train specials contact hCairman Reber by company phone an attempted to deal with him by way of Spier making proposal that other Special Agents could be assigned some of the extra trains to work out of Los Angeles during the summer season if he would surpress any and all claims made by union members against Del Mar Race train specials. Chairman Reber refused to take part in conspiracy to violate rules of agreement as desired by Officer of Carrier Mr. Spier, still did not advertise position for seniority choice after Reber's refusal.

"f.) Position of Special Agent on the Del Mar Race train Special is an established position, I refer you to J. L. Hastings bid bulletin No.-L.A. 394 of 1961, July 7th. J. L. Hastings was Supt. Spl. Service then on Coast Lines. Position was posted as Temporary during the Race season (season being over thirty (30) days, duties listed as primarily consisting of riding the Del Mar Race Specials during the yearly Race season, established at start of season and abolished at end of season working position over thirty days known duration, this in its self rules out reason used for declination as set forth in Landreth's letter of denial dated May 11, 1965.

"g.) Carrier supported claims as presented when Carrier's Officer's defaulted and further violated rules of agreement, article VI, section 9a of rules of agreement. Article VI, section 9a reads;

"Article VI, section 9a: All claims and 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 sixty (60) days from date of the occurrence on which the claim or grievance is based. Should any claim or grievance be disallowed, the carrier shall within 60 days from date same is filed, notify who ever filed the claim or grievance (the employee or his representative), in writing of the reason 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.

"1.—Claimant's all filed claims by way of presenting daily time reports against the position of Special Agent on the Del Mar Race Train Specials, July 28, 1964 to and including September 15, 1965.

Div. Special Agent R. F. Burnette at San Bernardino, Los Angeles Div. Coast lines accepted claims, claims were filed each and every days position worked, all were filed within the 60 day clause of article VI, section 9a rules of agreement. Claimant R. D. Lay also filed for all expenses paid out on said position in his letter dated September 20, 1964 to Mr. Burnette.

"2.—Claimants were not notified in writing by Mr. Burnette of reason for disallowance in his letters to each of the claimants, R. D. Lay—September 10, & 17, 1964, J. C. Reber—September 10, & 22, 1964, C. E. McGrath—September 10, 1964. Only notice given to each of these aboved named claimant's was that Burnette was denying payment of all time claims against the Del Mar Race train, no reason given for denial as required in Article VI, section 9a. In letter to R. D. Lay and J. C. Reber dated September 10, 1964 Burnette incorporated two such denials into one letter and failed to give reason on either of these claims (claims were against the Del Mar Race Train, and a San Diego position and should have been handled separately) making Carrier default on claims under rules of agreement, article VI, 9a. Burnette Failed to notify R. D. Lay at any time, or has any other Officer of the Carrier notified him or his representative as of this date of acceptance of this claim for expenses paid out on the position of Special Agent on Del Mar Race train specials, July 28, 1964 to and encluding September 15, 1964. under article VI, 9a his claim is allowed as presented under said rules of agreement ,article VI 9a.

"2.—Claimant's claims were appealed to next higher Officer of the Carrier Supt. P. M. Genrich, Special Service Coast lines, Los Angeles, Calif., Chairman's letter dated October 19, 1964 (each claim covered by separate letter of same date) in such letter he notified said officer of carrier that claims shall be paid as rules of agreement had been violated and under article VI 9a such claims be allowed as presented by R. D. Lay, J. C. Reber, and C. E. McGrath.

"Not only did Mr. Genrich fail to authorize payment under article VI, 9a he waited untill Mr. Burnette could get letter out to each of the claimants dated October 22, 1964 stating that reason for denial was that claims were not supported by agreement, this was after claims had been appealed and Burnette had no further authorized handling of said claims making his letter of October 22, 1964 viod under article VI, 9a. Mr. Genrich's letter of denial dated October 27, 1964 gave reason for denial as claims were not supported by Patrolmen's agreement. this is no reason for denial as it states a blank covering of denial and under article VI, 9a a specific reason must be given for such denial. Genrich's failure to give specific reason of denial under article VI, 9a such claims under said rules of agreement will be allowed as presented.

"3.—First and only real denial where reason was given for such denial was in General Managers letter dated May 11, 1965 by Mr. Spier where he stated reason for denial, this being well over the 60 days when claims where presented to original officer of the carrier Mr. Burnette and then appealed to Mr. Genrich and later appealed to J. N. Landreth. For all such reason of violation of rules of agreement under article VI, 9a and original violation article iV, 1. such claims shall be allowed as presented and claimant's R. D. Lay, J. C. Reber,

C. E. McGrath receive compensation as claimed.

"Yours truly,

/s/ Joe. C. Reber
J. C. Reber

"cc: J. N. Landreth"

"(letterhead omitted)

"July 9, 1965
180-4-1-2

"Mr. J. C. Reber, Gen. Chairman
Railway Patrolmen's International Union
787 Edgemoor Road
San Bernardino, California 92405

"Dear Sir:

"This will acknowledge receipt of your letter of June 25, 1965, received in this office on July 8, apparently addressed to Mr. More in error, appealing claim in behalf of Special Agents R. D. Lay, J. C. Reber and C. E. McGrath, Los Angeles Division, account alleged improper filling of temporary vacancy on position assigned to Del Mar Race Train Specials, Los Angeles to Del Mar and return July 28 to September 15, 1964.

"After I have had an opportunity to obtain and review the facts in this claim, I shall communicate with you further.

"Yours truly,

/s/ O. M. Ramsey"

"(letterhead omitted)

"August 13, 1965
180-4-1-1
180-4-1-2

"Mr. Joe C. Reber, President and General Chairman,
Railway Patrolmen's International Union,
787 Edgemoor Road,
San Bernardino, California

"Dear Sir:

"Referring further to your letters of June 25, 1965 concerning your two appeal claims in behalf of yourself and two other Special Agents commencing July 28, 1964.

"In order that I may complete my investigation it will be necessary that I seek your concurrence to a 30-day extension or until September 23, 1965 of the time limit rule within which to render my decision.

"Will you please advise.

"In this connection, it is noted that your appeal letters in these

cases were addressed to Mr. More. If you will refer to latter's letter of July 9, 1962 you will note that advice was furnished you to the effect that following the retirement of Assistant Vice President-Personnel, Mr. L. D. Comer, effective July 1, 1962, the undersigned was appointed to succeed him as Assistant to Vice President-Personnel and designated as this Carrier's highest officer of appeal to consider claims and grievances. Therefore, the instant claims should have been addressed to me.

Yours truly,

/s/ O. M. Ramsey"

"(letterhead omitted)

"August 19, 1965

"Mr. O. M. Ransey
Assistant to Vice President
Railway Exchange Building
80 East Jackson Blvd.
Chicago, Illinois, 60604

Dear Sir;

"Referring to various letters and ending with yours of August 13, 1965, under files 180-4-1-1 and 2, covering my appeals of clames on behalf of my self and two other special agents commencing July 28, 1964. and your request for extension of time to complete your investigation.

"Your request for extension of 30-days extension or until September 23, 1965 to render a decision is granted.

"I am sorry for the mishandling of prior letters to Mr. More instead of yourself.

"Yours truly

Joe. C. Reber
/s/ Joe. C. Reber"

"(letterhead omitted)

"September 16, 1965
180-4-1-2

"Mr. Joe C. Reber, General Chairman,
Railway Patrolmen's International Union,
787 Edgemoor Road
San Bernardino, California 92405.

"Dear Sir:

"Referring further to your letter of June 25, 1965, appealing from the decision of General Manager Landreth claim in behalf of yourself as a Special Agent and two other Specials Agents, viz., Messrs. R. D. Lay and C. E. McGrath, Los Angeles Division, for additional compensation during the period July 28 to and including September 15, 1964:

"The referred to claim seems to be connected with and is appar-

ently a part of another dispute which you appealed to me on June 25, 1965, covering the Carrier's alleged failure to bulletin Position No. 2371 as a temporary vacancy when Special Agent W. F. Lindner at San Diego, who was the regular incumbent thereof, was, as you claim, removed therefrom and assigned to position of Special Agent on the Del Mar Race Special from July 28th to and including September 15, 1964.

"Insofar as concerns the instant dispute, I wish to point out that you amended such claim to include an additional item, viz, the payment of expenses that was allowed to the incumbent of the position that was assigned to the Del Mar Race Special during period it was operating from July 28th to and including September 15, 1964. This part of the claim relating to the payment of expenses was never referred to in your appeals to Superintendent Special Service Genrich and General Manager Landreth, although I would understand that Special Agent Lay filed such a claim in his initial appeal, but it was apparently dropped in your further appeal of his particular claim. This handling represents an expansion of your claim on appeal and is directly contrary to the many awards of the Third Division, National Railroad Adjustment Board, which has consistently ruled that claims may not be amended during the course of appeal on the property or to the National Railroad Adjustment Board; the latter having dismissed such claims that have been presented to it on this premise without in all cases going into the merits. It is accordingly the Carrier's position that before a dispute can be properly handled to a conclusion no revision thereof can be made from the time it is handled at the lowest level to the last officer of appeal. In other words, any revision thereof either following the initial handling or on subsequent appeals will have to be re-initiated and then handled in the same form through the various officers of appeal. Not having done so in the case before me, I cannot accept your appeal claim in the form in which it has been presented to me. Your claim is accordingly barred from my further consideration and it is respectfully declined account failure to handle in accordance with the time limit provisions of Article VI, Sections 9, of the current agreement with your Organization.

"Without prejudice to the Carrier's position that the claim as presented in yours of June 25th is not properly before me, I have the following comments to make with regard to the merits thereof.

"I understand that the Del Mar Race Train Special, which is a seasonal operation, was placed in service effective July 28, 1964; operating daily, except Sundays, to and including September 15, 1964. Train Rider W. F. Lindner, assigned to Position No. 2371 with headquarters in San Diego, was instructed by Division Special Agent Burnette to ride this train during the 1964 racing season. Other than on Sundays, when the Race Special did not operate, and on his assigned rest days, viz., August 10, 17, 21, 24, 25 and 26, 1964. Mr. Lindner was used to protect such train from July 28 to and including September 15, 1964, although I have been given to understand that Special Agent Lay, one of the Claimants in this dispute, did work as a second Train Rider on this Special as follows:

'August 1.....12½ hours
August 6.....14½ hours

August 8.....	13½	hours
August 18.....	14	hours
August 22.....	10	hours
Sept. 7.....	13½	hours
Sept. 10.....	15	hours'

"I further understand that Mr. Lindner was also used for the main portion of train work on this Race Special during the period it was operated in 1962 and 1963 no previous protest or claim being filed as result of such handling.

"The referred-to Train Rider Position No. 2371 was advertised under 'Bid Bulletin No. LA403' on September 22, 1961, and, on September 30, 1961, Mr. Lindner, being the successful bidder, was placed thereon. The assignment of Mr. Lindner to the Del Mar Race Special during the period involved in the instant dispute was a part of the duties that were contemplated to be performed by the language in the referred-to bulletin.

"Contrary to your views, when this Race Special was put in operation there was no need for any new position to be established, nor was there a vacancy in the sense contemplated by the provisions of Article IV, Section 1 of the current Agreement on which you rely. There is nothing in this rule, or any other agreement rules, that says what shall constitute a new position or vacancy. It simply provides the procedures to be followed if and when new positions are established and/or temporary or permanent vacancies are to be filled. Furthermore, this rule cannot be construed, either literally or by implications, as imposing an obligation on the Carrier to fill a vacancy if there be need to do so—which was not the case in the instant dispute. The Carrier chose to have the work on the Race Special protected by Mr. Lindner, who was assigned in the territory in which this train operated and whose assignment, by agreement or otherwise, did not preclude using him for such work. Finally, the Carrier has the inherent managerial prerogative to choose the manner in which its work will be performed, and, at the same time, has the further right to supervise and direct the services of its employees; in fact, this is the primary function of management. Except insofar as it has restricted itself by an agreement, the assignment of work necessary for its operations lies within the Carrier's discretion. As a matter of fact, the Carrier may, in the interest of economy and efficiency of its operations, rearrange the work thereof—as was done in the instant dispute—unless it has limited its right to do so by the provisions of the collective agreement. Therefore, since the provisions of Article IV, Section 1 are not applicable in the instant case, it cannot be charged that there was any violation thereof.

"Be that as it may, it is apparently your position that instead of removing Mr. Lindner from his regular position (No. 2371) and placing him as a train rider on the Race Special, the Carrier should have established a new position and bulletined it for seniority choice, irrespective of the fact that the work which Mr. Lindner was required to perform on the Race Special was already encompassed in the bulletin originally creating Position No. 2371 and to which Mr. Lindner held title; and it is your further position that the Carrier should now be penalized to the extent of additional compensation in behalf of the three Claimants for each day the Special was operated even though only one position actually is involved.

"In conclusion, I also wish to point out that your claim for penalties in behalf of the three claimants is not only excessive but also constitutes a claim for a triple or pyramided penalties in behalf of three or more employes for the same alleged violation, whereas the Third Division of the National Railroad Adjustment Board has consistently held that the proper measure of penalty compensation to be assessed against a carrier for an agreement violation is the making of the injured employes whole by reimbursing them for any loss of compensation. See Awards Nos. 6701, 6715, 7309 and many others.

"I must repeat that your claim is respectfully declined.

"Yours truly,
/s/ O. M. Ramsey"

We have attached hereto and made part of this submission Employee Exhibits numbered 1 to 5 inclusive. Exhibits Nos. 1 and 2 consist of copies of bulletins posted by the carrier advertising the position on the Race Train in the years 1960 and 1961. Exhibit No. 3 is copy of bulletin posted by the carrier advertising Position 9201, also a temporary position which serves as proof that the carrier has formerly bulletined temporary positions. Exhibit No. 4 is a sample Daily Report submitted by claimant for each day claimed July 28 to September 15, 1964 inclusive. Ex. No. 5 is copy of bulletin advertising Position 2371, from which incumbent was arbitrarily removed.

CARRIER'S STATEMENT OF FACTS: There is an agreement in effect between this Carrier and the Railway Patrolmen's International Union, A.F. of L.-C.I.O., effective December 1, 1945 (reprinted August 1, 1956 to include revisions), a copy of which is on file with the Fourth Division, National Railroad Adjustment Board and is hereby referred to and made a part of this dispute.

In about the year 1937 a race track was placed in operation at Del Mar, California, which is located 105 miles south of Los Angeles on this Carrier's main line between Los Angeles and San Diego. This race track operates during the summer months and special trains have been operated between Los Angeles and the race track each racing day. From the opening of the track until 1956 employes of the Special Service Department were used to police the train but no one particular Special Officer was assigned to such service, which was protected by various officers in conjunction with their regular duties.

In 1956 the work load of the Department was so heavy that the existing force of Special Officers could not police the race train and carry on their other work and an additional position was established to do nothing but police the race train and the position was bulletined for seniority choice. The same arrangement was continued in effect each succeeding summer through 1961.

In 1962, 1963 and 1964 it was decided that the race train could be policed without establishing an additional position and the practice which was in effect prior to 1956 was reverted to, i.e., the train was policed by the regular force of the Special Service Department without establishing an additional position to work solely on the race train.

No protest was registered and no claims were submitted by the organization as a result of the manner in which the race train was policed in 1962 and 1963. In addition to the one regularly assigned race train, it was necessary to run additional sections to handle overflow business on certain days and there were also several special trains operated exclusively to accommodate clubs and business organizations.

The 1964 race meeting ran 42 days and a total of 56 trains was operated. Each of those trains was policed by at least one Special Service Department Officer and in some cases by two. A total of 69 trips was made by Special Agents, all of whom were assigned to regular positions. Those who worked the race train were:

W. F. Lindner	36 days
A. R. Saez	14 days
L. L. Yarnell	8 days
R. D. Lay	7 days
D. E. Hall	4 days
or a total of	<hr/> 69 trips

In conference with Carrier's Assistant to General Manager J. E. Spier and Assistant Supervisor of Wage Agreements R. E. Lowrie on July 24, 1964, General Chairman J. C. Reber, who is also the claimant in this case, stated that a new position of Special Agent assigned to the race train had been established but not bulletined for seniority choice. Mr. Reber was advised that an investigation would be made, and if his statement was correct, the position would be advertised. Investigation developed that a new position had not been established and that it was the intention to police the race trains with the regular force of officers.

Subsequent thereto Mr. Spier verbally advised Mr. Reber of the fact, and because Mr. Reber seemed to feel that favoritism was being shown Mr. Lindner by allowing him to work the bulk of the race trains as he had done in 1962 and 1963, Mr. Spier informed Mr. Reber that we would be willing to alternate other officers on the race train if that was what Mr. Reber wanted. Mr. Reber, however, continued to insist that a new position had been established and should be bulletined.

Mr. Lindner was the incumbent of Position No. 2371 with headquarters at San Diego but with assigned territory covering the entire Los Angeles Division. Quoted below is Bid Bulletin under which Mr. Lindner was assigned to Position No. 2371 in September 1961:

"THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY-COAST
LINES—OFFICE OF SUPT. SPECIAL SERVICE

BID BULLETIN NO. LA-403

Los Angeles, Sept. 22, 1961

ALL CONCERNED:

The following position is advertised for seniority choice, bid for which will be accepted by the undersigned until midnight, Sept. 29, 1961:

POSITION NO.	— 2371
LOCATION	— Los Angeles Division (Headquarters San Diego)
TITLE	— Train Rider
RATE	— \$20.589 per day
STARTING TIME	— Unassigned

As information—The duties of this position will consist primarily

of riding and inspecting freight trains and passenger trains, conducting all types of investigations and performing all duties assigned by Supt. Special Service and Div. Spl. Agent, such as conducting investigations pertaining to freight claims, OS&D, Baggage claims and all irregularities in connection with railroad police protection; also, a valid Calif. Driver's License is required.

J. L. Hastings
Supt. Spl. Service"

Claimant Reber was assigned to Position No. 2303, which was originally Position No. 615, which was restricted to service at San Bernardino. Mr. Reber was the successful bidder on Position No. 2303 under the following bulletin:

"THE ATCHISON, TOPEKA AND SANTA FE RAILWAY—COAST LINES

OFFICE OF SUPT. SPECIAL SERVICE

BID BULLETIN NO. LA-221

Los Angeles, April 17, 1953

ALL CONCERNED:

By reason of eliminating Position 554 at San Bernardino and changing the assignment of Position 609 from a strictly tunnel job to a combination tunnel and train yard assignment, a new position is being created therefor, and concurrent with its placement, Position 609 will be discontinued. Accordingly, the following position is advertised for seniority choice, bids for which will be accepted by the undersigned until midnight, April 24, 1953:

POSITION NO.	— San Bdno. (frt. yds. to tunnel)
LOCATION	— Special Officer
TITLE	— \$14.111 per day plus cost-of
RATE	— 615
	living adj. of 80c per day to &
	including April 1, 1953, and the
	further wage increase of 32c per
	day effective Dec. 1, 1952.

STARTING TIME — 7 A.M.

As information—The duties of this position from 7 AM to approximately 8:30 AM will consist of policing the 3rd St. Tunnel entrance. Thereafter the duties will primarily consist of policing the freight yards and possibly the shop area from time to time.

J. L. Hastings
Supt. Spl. Service"

and was continuously assigned to the above position until after the date of this claim.

On September 7, 1964 Claimant Reber submitted claims to Division Special Agent Burnette covering each day the race train operated from July 28, 1964 through August 31, 1964. Except for August 10 when 6½ hours overtime was claimed and August 17 when 8 hours overtime was claimed, the claims were for

8 hours regular time and 4 hours overtime. The claims were stated as follows:

"Time clame (sic) on Del Mar Race Train, not bulletined in accordance with Article IV, Section 1 of the current agreement."

Later, exact date unknown, Mr. Reber submitted similar claims for the period September 3 to 15, 1964. Division Special Agent Burnette initially declined the claims in the following letters:

"San Bernardino
September 10, 1964

"Mr. J. C. Reber:

With reference to daily reports submitted by you, dated from July 28th to August 31st inclusive, claiming time on the Del Mar Race Train, not bulletined in Accordance with Article Four, Section one of the current agreement.

This to advise you that I am denying payment of all time claims mentioned above.

R. F. Burnette

cc: Mr. P. M. Genrich"

"San Bernardino, September 22, 1964

"Mr. J. C. Reber:

With reference to your daily work reports from September 3rd through September 15th, inclusive showing time claim for position on Del Mar Race Train. This to advise that I am declinnng payment of these claims.

R. F. Burnette

cc: Mr. P. M. Genrich

Mr. C. E. McGrath"

On September 24, 1964, Superintendent of Special Service Genrich referred the claims to General Manager J. N. Landreth for advice as to handling. Mr. Landreth requested additonal information from Mr. Genrich, and following its receipt, wrote Mr. Genrich on October 20, 1964 calling attention to the fact that Division Special Agent Burnette had not given a reason for declining the claims as required by Section 9-a of Article VI of the Patrolmen's Agreement. Mr. Landreth instructed that Mr. Burnette comply with the foregoing requirement, which was done in the following letters to Mr. Reber:

"San Bernardino, October 22nd, 1964

"Mr. J. C. Reber—San Bdno

Please refer to my letter of September 10, 1964 declining your claims from July 28 to August 31st, inclusive, which were received in this office September 7, 1964, claiming time on the Del Mar Race Train account not bulletined in accordance with Article IV, Section 1 of the current agreement.

My reason for declining the claims is that they are not supported by the agreement.

(Signed) R. F. Burnette
R. F. Burnette

cc: Mr. P. M. Genrich"

"San Bernardino, October 22nd, 1964

"Mr. J. C. Reber—San Bdn

Please refer to my letter of September 22, 1964 declining your claims from September 3rd through September 15th, inclusive, claiming time for position on Del Mar Race Train.

My reason for declining the claims is that they are not supported by the agreement.

(Signed) R. F. Burnette

R. F. Burnette

cc: Mr. P. M. Genrich"

Mr. Burnette's letters quoted above were dated less than sixty days after the dates the claims were initially submitted by Mr. Reber, the first submission by him being made to Mr. Burnette September 7, 1964. Thus, there was no violation of the requirement of Section 9-a of Article VI with respect to giving a reason for declining the claims.

On October 19, 1964, General Chairman Reber appealed the claim to Superintendent of Special Service Genrich in the following letter:

"San Bernardino, October 19, 1964

"Mr. P. M. Genrich
Superintendent Special Service
Atchison, Topeka and Santa Fe Railway Company
121 East Sixth Street
Los Angeles 14, California

Dear Sir:

Please accept this as an appeal of the decision of Division Special Agent R. F. Burnette in denying the claim of Joe C. Reber's time claim on the Del Mar Race Train.

(a) Carrier failed and refused to advertise for seniority choice, position of Special Agent on the Del Mar Race Train.

(b) Mr. Joe C. Reber shall now be compensated for one days pay and overtime worked each day comencing July 28, 1964 and continuing to and including September 15, 1964.

(c) On July 28, 1964 Carrier established a regular position of Special Agent on the Del Mar Race Train, working between Los Angeles and Del Mar and return. It failed and refused to bulletin such position but in lieu thereof removed Mr. W. F. Lindner from his regular position at San Diego, position No. 2371, Special Agent with unassigned hours and placed him on the Special Agents position on the Del Mar Race Train from July 28, 1964 to and including September 15, 1964, this includes eight (8) hours each day plus approximately four and one-half (4½) hours overtime each day Monday through Saturday.

(d) Mr. Reber holds regular assignment of Special Agent at San Bernardino and was available and willing to bid upon the position in question, which right was denied him by the Carriers failure and refusal to advertise this position.

(e) It is my position that Article IV, Section 1, supports this claim and also it is supported by Article VI, section 9a, by reason of Division Special Agent R. F. Burnette's failure to give reason in denying this claim.

Yours truly,

/s/ Joe C. Reber
/s/ Joe C. Reber

cc: Mr. R. F. Burnette"

Mr. Genrich declined the claims in the following letter:

"October 27, 1964
315-D

"Mr. J. C. Reber
President & General Chairman
Railway Patrolmen's International Union
787 Edgehill Road
San Bernardino, Calif.

Dear Mr. Reber:

This in reply to your letter of October 19th protesting denial of Special Agent Joe C. Reber's time claims on the Del Mar Race Track Specials:

Mr. Reber's time claims for the period of July 28, 1964 to and including September 15, 1964 are declined for the reason that they are not supported by the Patrolmen's Agreement.

There was no violation of Article IV, Section 1, by Division Special Agent R. F. Burnette since on October 22, 1964—well within the 60-day period following receipt of Mr. Reber's first claims on September 7th—he wrote him advising that the claims were declined because they were not supported by the schedule.

Yours truly,

/s/ P. M. Genrich

cc: Mr. R. F. Burnette"

Mr. Reber appealed the claim to General Manager Landreth in the following letter:

"San Bernardino, November 2, 1964

"Mr. J. N. Landreth, General Manager
Santa Fe Ry. Co. Coast Lines
121 East Sixth Street
Los Angeles 14, California

Dear Sir;

Please accept this as an appeal of the decision of Sup't Special Service P. M. Genrich in denying the clame (sic) of Joe. C. Reber's time clame on the Del Mar Race Train.

(a) Carrier failed and refused to advertise for seniority choice, position of Special Agent on the Del Mar Race Train.

(b) Mr. Joe. C. Reber shall now be compensated for one days pay

and over time worked each day commencing July 28, 1964 to and including September 15, 1964.

(c) On July 28, 1964 Carrier established a regular position of Special Agent on the Del Mar Race Train, working between Los Angeles and Del Mar and Return. It failed and refused to bulletin such position but in lieu thereof removed Mr. W. F. Lindner from his regular position at San Diego, position No. 2371, Special Agent with unassigned hours and placed him on the Special Agents position on the Del Mar Race Train from July 28, 1964 to and including September 15, 1964, this includes eight (8) hours each day plus approximately four and one half (4½) hours overtime each day Monday through Saturday.

(d) Mr. Reber holds regular assignment of Special Agent at San Bernardino and was avable (sic) and willing to bid upon the position in question, which right was denied him by the Carriers failure and refusal to advertise this position.

(e) It is my position that Article IV, Section I, supports this claim and also it is supported by Article VI, Section 9a, by reason Division Special Agent R. F. Burnette's failure to give reason in denying this claim.

Yours truly,

/s/ Joe C. Reber

/s/ Joe C. Reber

cc; P. M. Genrich"

The time limit was suspended pending an opportunity to discuss the claim in conference. Mr. Landreth declined the claim in the conference and confirmed his declination in the following letter:

"May 11, 1965
51-EX-70

"Mr. Joe C. Reber, General Chairman,
Railway Patrolmen's Int'l. Union,
787 Edgehill Road,
San Bernardino, Calif. 92405.

Dear Sir:

There was discussed in conference recently time claims in favor of Special Agents R. D. Lay, C. E. McGrath and J. C. Reber, July 28 through September 15, 1964, for additional compensation in connection with the Del Mar race train.

As you were advised in our conference, the additional duties of riding the Del Mar race train were assigned to the occupant of Position No. 2371 at San Diego, California during the racing season, and during which period he also performed any necessary duties on his regular assignment.

This was not a new position, permanent vacancy, or temporary vacancy of over 30 days as referred to in Section 1 of Article IV and there was, therefore, no violation of that article in assigning the work to the San Diego position.

This will confirm my declination of the claims as set forth above.

Yours truly,

/s/ J. N. Landreth"

The General Chairman then appealed the claim to Assistant to Vice President Ramsey, who is the Carrier's highest officer of appeal. Mr. Ramsey's declination of the claim concluded the handling on the property.

The Agreement rules which the organization has cited in support of the claim are quoted below:

"ARTICLE IV

"Section 1. Temporary vacancies, unless known to be of over thirty (30) days' duration, and new positions of indefinite duration, may be filled without regard to seniority and will not be advertised until the expiration of thirty (30) days. Other new positions and permanent vacancies or temporary vacancies of over thirty (30) days' known duration that are to be filled, will be promptly bulletined to employees holding seniority in the class in which they occur."

"ARTICLE VI

"Section 9-a. 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."

(Exhibits not reproduced)

OPINION OF BOARD: The Organization predicates this claim on both procedural and substantive violations of the requisite Schedule. The procedural aspect of the claim devolves upon the proper construction of Article VI, Section 9-a while the substantive aspect devolves upon the construction of Article IV, Section 1.

Article VI, Section 9-a states:

"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 shall not be considered as a precedent or waiver of the contentions of the Carrier as to similar claims or grievances."

The following operative facts govern both the disposition of the procedural and substantive aspects of the Case. In 1937 the Carrier commenced operating the Del Mar Race Track Train from Los Angeles to Del Mar, a distance of 105 miles. During a period that generally ran from July 28 to September 15, the Race Train operated every day that the Track was open. From 1937 to 1956, the Carrier states that the Train was policed by employes from the Special Service Department as part of their regular duties. From 1956 through 1961, the Carrier established and bulletined a position wherein the Race Train was exclusively policed by the holder of this bulletined position. In 1962, 1963 and 1964, the Carrier reverted to having the Race Train policed by the regular members of the Special Service Department and not by any special bulletined position.

The Organization states that, despite the assurances it received on July 24, 1964 from the two Assistants to the Carrier's General Manager, Los Angeles, that the position of riding the race train should be bulletined, it was not. The General Chairman of the Organization then filed daily time claims covering the period from July 28 through August 31, 1964 and again from September 3 through September 15, 1964.

The procedural aspect of this claim stems from the fact that on September 10, 1964 Divisional Special Agent Burnette wrote the General Chairman that he was denying the claims for the period from July 28-August 31, 1964 and he again wrote on September 22, 1964 that he was denying the claims for the period from September 3-15, 1964.

On October 19, 1964 the General Chairman appealed Agent Burnette's declination to Superintendent of Special Services Genrich.

On October 22, 1964 Special Agent Burnette wrote two separate letters to the General Chairman, making reference to his declination letters of September 10 and 22, 1964 respectively, wherein he stated in both letters that his reason for declining the claims were "that they were not supported by the agreement".

The Organization contends that the action of the Carrier in declining the claim in the manner in which it did was a breach of Article VI, Section 9(a). It notes that Mr. Burnette declined the claims on both September 10 and 22, 1964 without stating any reasons therefor. The fact that Mr. Burnette attempted to cover up his error by writing on October 22, 1964, after the claims had been appealed to Superintendent Genrich, is to no avail, because by now the matter had passed out of Mr. Burnette's jurisdiction and he was not in any position to correct his erroneous act. Secondly, the Organization states that Mr. Burnette's belated effort was still defective because he did not advance any adequate reason for declining the claims.

The Carrier's defense to the procedural attack levied against its actions in declining the claims is that Mr. Burnette's action on October 22, 1964 was contractually proper because he acted well within the allowable 60 days. The fact that the Organization had appealed to the Superintendent did not nullify Mr. Burnette's declination which was made within 45 days from the submission of the first claim.

Concerning the second prong of the Organization's procedural attack, the Carrier states that, to the Organization's terse statement that the Race Train was "not bulletined in accordance with Article IV, Section 1 of the current agreement", Mr. Burnette's declination was adequate. In light of the terse statement of claim by the Organization, the Carrier's representative had no recourse but to word his declination of the claims in the way that he did, i.e.,

"that they are not supported by the agreement."

The Board finds that the Carrier was correct in one part of its interpretation but wrong in another part of its interpretation of Article VI, Section 9(a). The Board must hold that the Carrier's position was well founded when it maintained that as long as Mr. Burnette's declination was issued within the allowable contract period of 60 days, it was timely filed. As long as the Carrier's officer acted within this permissible period, the Organization's contractual rights were not breached. The Organization cannot unilaterally foreshorten the Carrier's rights by filing an appeal to the next highest appeal officer within the period granted the Carrier to deny the claim. If the Carrier acted within this agreed-upon period, the Organization has no valid basis for contending that its contractual rights were transgressed.

However, the Board also concludes that the Carrier did breach Article VI, Section 9 by the nature of the answer that Mr. Burnette filed on October 22, 1964. Mr. Burnette's answer contending that the claims were not supported by the agreement is not an adequate and comprehensive answer as to why the claims were declined. The Organization did state, albeit tersely, an adequate cause of action when it alleged that the claims were based on a breach of Article IV, Section 1. This Article is clear and unambiguous regarding the obligation to bulletin both new positions and temporary vacancies more than 30 days in duration. For the Carrier's agent to say that the claims were not supported by the agreement is not to state, with the necessary degree of specificity and detail, why the claims were not valid. There is a sound rationale underlying the requirements of Article VI Section 9. It is that if the Carrier advances a comprehensive and responsive answer to the Claim, it may well be that the Organization will desist from further prosecuting it. A vague and general answer will not secure such an objective. An answer which is vague and general is not an "answer" within the meaning of the Article in issue.

The Board cannot accept the Carrier's theory advanced by the several awards it cited in its Rebuttal Submission which indicated that, at the initial stages of processing a claim, the Carrier is not obligated to state in full in answer and may wait until the conference is held between the General Chairman and the Carrier's Personnel Department. The Board's reading of the requisite Article does not find the slightest suggestion of such a procedure. The terms and provisions of Article VI, Section 9, must be applied in the same manner at each and every stage of grievance adjudication.

In summary the Board finds that Mr. Burnette's answer was too general and non-specific to meet requirements for being an adequate answer as to why the claims were declined. By virtue of finding that the claims were not answered within the purview of the provisions of Article VI, Section 9, the Board has no recourse but to sustain the claims on the ground that Article VI, Section 9 was violated by the Carrier.

In view of the aforementioned finding, the Board does not find it necessary to discuss the substantive aspect of the claims.

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

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

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **FOURTH DIVISION**

ATTEST: Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1967.

**DISSENT OF CARRIER MEMBERS TO AWARD 2185 (DOCKET 2167):
AWARD 2186, (DOCKET 2174)—RPIU vs AT&SF**

The majority sustain the claims in these dockets because, in their opinion, the wording of the Carrier's timely declination of the claims "that they are not supported by the agreement" is not an "adequate and comprehensive" reason as to why the claims were declined. The time limit rule here, Article VI, Section 9, is identical to Article V, Section 1 (a) of the National Agreement of August 21, 1954. In a long series of awards construing this rule it has been consistently held that "compliance with the applicable language of Article V, 1 (a) of the National Agreement does not require detailed or specific reasons for disallowance. Awards 11208, 10416, 10368, 9835, 9615." Third Division **Award 14864**, MW v. CRI&P, Referee Ives.

In Third Division **Award 12450**, CL v. PE, Referee Sempliner, the Carrier notified claimants their claim was denied "as not being supported by the agreement." nI holding that a denial so worded complied with the agreement, Referee Sempliner said: "* * * The Carrier did all that was possible in making an answer. The claim had no basis in the agreement, and no further explanation was possible." That is precisely the situation here.

In Third Division **Award 14761**, SG v. CRI&P, Referee Ritter said:

"Article V of the August 21, 1954 Agreement does not prescribe the words or language which must be used to give notice of the disallowance of a claim. (Awards 9615, 10368); nor does the denial require detailed or specific language (Awards 11208, 10416, 10368, 9835, 9615); nor is the reason even required to be valid (Award 12298)."

To the same effect see, Third Division Awards 14846, 14855, 15153.

The Carrier's declination here, contrary to the erroneous conclusion of the majority, met the requirements of Article VI, Section 9. These claims should have been dismissed as there was no basis in the agreement therefor and the Carrier's declination was as specific as possible and no further explanation was required or necessary.

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