

Award No. 2186

Docket No. 2174

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 position known to be of more than thirty days' duration was violative of rules of agreement.

(b) That claimant R. D. Lay shall be paid one day's pay for each day the position was left vacant.

OPINION OF BOARD: This case is a companion case to the case encompassed by Award No. 2185 (Docket 2167) and contains substantially the same arguments advanced by both parties, except that in the instance case, the Organization presented the additional argument, namely, the Carrier's General Manager Landreth did not properly decline the instant claim.

Upon review of the entire record the Board must hold that its Findings in Award No. 2185 (Docket 2167) which found that Special Agent Burnette did not state an appropriate or satisfactory reason in declining the claim was a violation of Article VI, Section 9-a, are equally applicable to the instant claim.

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

The carrier and the employes involved in this dispute are respectively carrier and employe 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. CRIP, 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." In 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 vaild (Award 12298)."

To the same effect see, Third Division Awards 4846, 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.

Chicago, Illinois
March 28, 1967

CARRIER MEMBERS

A. H. Deane
B. G. Upton
C. A. Conway