Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 3473
FOURTH DIVISION Docket No. 3455

Referee James C. McBrearty

PARTIES TO DISPUTE: Railroad Yardmasters of America

Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Claim of Yardmaster J. M. Hall for eight hours at straight time rate for July 20, 23, 24, 25, 26, 27, 30, 31, August 1, 2, 3, 6, 7, 8, 9, 13, 14, 16, 17, 20, 21, 22, 30 and 31, 1975 due to violation of Working Agreement.

Claim of Yardmaster J. M. Hall for eight hours at pro-rata rate continuing from September 1, 1975 and to run at the rate of five days per week until the above claim is resolved, or abolished positions restored.

OPINION OF BOARD: Both parties have alleged that there have been significant procedural violations by the other party in the instant case.

Carrier argues that the specific act that gave rise to the claims was the abolishment that occurred on December 30, 1974. Since the original presentation of this claim was made by the Organization's General Chairman on September 17, 1975, Carrier's position is that the claim is barred because Petitioner failed to present the claim within 60 days from the date of occurrence.

However, the Board finds there is no merit in the contention that the claim must be dismissed under the time limit requirements of Article V(a) of the August 12, 1954 National Agreement since it was filed more than 60 days after the Yardmaster position was abolished. A careful review of the record as well as the arguments of the parties, reveals that the act complained of is not the elimination of a position, but rather the use of non-yardmasters to handle the duties of the abolished position. The first claim date is July 20, 1975, and the initial filing of the claim took place on September 17, 1975, which is just within the prescribed 60-day time limit. (See Fourth Division Award 1836).

More on the mark, however, is Petitioner's contention that Carrier violated Article V(a) of the August 12, 1954 National Agreement, when Carrier's Trainmaster N. H. Pullen, denied the claim within the prescribed 60-day time limit, but failed to give any reason for the denial of the claim. Article V(a) specifically says in relevant part, "...the Carrier shall.... notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly..."

The former NYC&St.L. R.R., now part of the N&W System, was signatory to the August 12, 1954 National Agreement. Petitioner argues that the dispute herein involves that former territory, and the parties, therefore, are subject to the conditions therein. We agree with that reasoning.

The Board finds that Trainmaster Pullen's first answer that "the above claims are respectfully declined," and his second answer that "these claims are denied account they are not sustained under the rules," are not an adequate and comprehensive answer as to why the claims were declined. For the Carrier's agent to merely say "the above claims are respectfully declined" or "they are denied account they are not sustained under the rules," 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 V (a), namely, that if the Carrier advances a comprehensive and responsive answer to the Claim, it may well be that the Organization will desist from further prosecution of 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 Article V(a). (See Fourth Division Awards 2186 and 2185).

Carrier objects, however, to this Board's consideration of the alleged violation of Article V(a) of the August 12, 1954 National Agreement, on the ground that such claim was not made to Carrier's highest officer on the property. Carrier argues that while this allegation was raised by the General Chairman in correspondence on the property with the Trainmaster and the Superintendent, it was not raised in the General Chairman's correspondence with Carrier's Vice President of Administration, and was, therefore, effectively dropped as an issue.

The Board, after a careful review of the handling on the property, finds that the General Chairman, in the last paragraph of his letter to Carrier's Vice President of Administration, states:

> "I request that you review all the facts involved by the letters and evidence submitted by the writer..." (Emphasis added).

The "letters" in the above statement can only refer to the previous letters sent to the Trainmaster and the Superintendent, wherein the allegation was very explicitly made that Carrier had violated Article V(a) of the August 12, 1954 National Agreement.

Consequently, the Board finds that Carrier's contention that the Board is now precluded from considering the alleged violation of Article V(a) is without merit.

Agreements of the parties and agreed-to interpretations thereof are proper subjects of appellate review whether or not they were cited or relied upon by the parties prior to the appeal of a claim to this Board. That is so because both parties are chargeable with full knowledge of the agreements and interpretations they have entered into. Accordingly, such agreements and interpretations are deemed to be in evidence at all stages of the progress of a claim and cannot be barred as "surprise evidence" when cited at this level of appeal. (See Fourth Division Award 2217; Third Division Awards 20183, 12075, and 11644; and First Division Awards 18467, 16962, 16072, 15851, 15709, 15254, 15230, 15042, 14716, 14707, 12469, and 5080). Accordingly, the Board will give due consideration to the Agreement, and the rule to which Carrier objects.

In so doing, the Board finds that answers of Carrier's Trainmaster and Superintendent were too general and non-specific to meet requirements for being adequate answers 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 V(a) of the August 12 1954 National Agreement, the Board has no recourse but to sustain the claim on the ground that Article V(a) 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 claim.

FINDINGS:

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

The carrier and the employe 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 were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Executive Secretary
National Railroad Adjustment Boa

By: Nancy J. Dever
Assistant Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1977