PUBLIC LAW BOARD NO. 2719

AWARD NO. 1

CASE NO. 1
NW FILE: YDM-STL-79-1
RYA FILE: 248-YDM-R

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Railroad Yardmasters of America

STATEMENT OF CLAIM

"Extra Yardmaster R. P. Carter, St. Louis, Missouri, for 2 or 3 shifts work at the pro rata rate of pay, yardmaster rate for each day October 13, 15, 16, 17, 18, 19, 20, 21, 1979, total 17 claims for 8 hours each or 136 hours."

OPINION OF BOARD

The parties have agreed that the Board, in this case, is limited to the procedural question of whether or not the Carrier's declination of the claim while the matter was under review on the property was proper, or if the declination violated the terms of the agreement. Further, it was agreed that if the Board determines that the declination was improper, we should sustain the claim.

The Organization has presented a document which indicates that claims at the St. Louis Terminal should be submitted initially to the Assistant Trainmaster in the Superintendent's office, and further appeal is made to the Superintendent, with final appeal being made to the Vice President - Administration. In accordance with that procedural understanding, the claims in this dispute were presented to the designated Assistant Trainmaster. Instead, the Superintendent (who is the Second Appeals Officer) replied to the claims in the first instance. The Organization took immediate exception to the identity of the individual who filed the answer, stating:

"We note that you as Superintendent, have answered

these claims at the first level of handling which we consider to be improper."

After citing Article 11(a) which specifies that claims must be presented in writing to the officer of the Carrier authorized to receive same, the Organization stated:

"By your answering these claims ahead of the Assistant to the Superintendent, Superintendent's Office, St. Louis Terminal has eliminated one level of appeal as supported by the Agreement."

The Superintendent, in denying the appeal, noted that Article 11(a) of the agreement does not require an answer by the individual to whom a claim is made; but instead, it requires that if the claim is disallowed the Carrier shall notify the Claimant or his representative of the reasons for the disallowance within sixty (60) days.

The Superintendent does not seem to comment upon the Organization's objection to the fact that the Superintendent, by answering in the first instance, deprived the Organization of an avenue of appeal.

The Carrier argues to us that the rule relied upon by the Organization only requires that the Carrier respond within 60 days; but there is absolutely no contractual requirement that the response be issued by the individual to whom the claim is directed in the first instance. Stated differently, the Carrier asserts "The rule is clear and unambiguous, the burden is on the employee for submission to the proper office not on the carrier as to who is to reply." In support of its contention, the Carrier has cited various Awards of the NRAB which have upheld the divergence of responsibility concerning the contractual grievance procedure.

The Organization has submitted contrary authority which it asserts upholds its position and compels an answer by the same individual who received the claim.

As we have reviewed the record, we fail to note any position by the Carrier concerning the assertion that the avenues of appeal have been effectively eliminated by the device of having different individuals issue answers than the individual to whom the appeal is made; notwithstanding the fact that the Organization raised that issue in direct terms in its initial appeal to the denial, and certainly, at least by indirection, it was raised in the appeal to the Vice President of Labor Relations when the Organization stated that the "out of cycle" answer was precluded by Fourth Division Award 2156 which speaks of a contractual appeal procedure.

The Board has noted the lack of uniformity of opinion in the cited Awards concerning the question of whether or not it is required, under language such as Rule 11(a), that the same individual who received the claim answer same. However, we find it unnecessary to issue a decision in that regard in order to dispose of the dispute. Assuming, without deciding, that the Carrier is correct in its interpreation of Article 11(a) concerning the just mentioned question, we are then left with the problem of elimination of a step in the appeal procedure, and we conclude that if the Carrier's action accomplishes that result, there has been a violation of the agreement.

The parties agreed to a certain procedure for resolving disputes which contains an appellate process. We do not presume to substitute our judgment for the parties' in that regard. For reasons best known to them, they agreed that such a procedure was to be followed in an effort to resolve disputes in an orderly manner. Further, the Carrier then designated the identity of the officials to whom the claim and the appeals should be processed. When the Carrier, by its unilateral action, substitutes a decision on the merits by 2 individuals for a judgment by 3 individuals, the Carrier has violated the specific terms of the understanding of the parties and, accordingly, we have no alternative but to find that in this particular case, when the Superintendent served as both the individual who declined the claim and the individual to whom appeal was to be submitted, there is a violation.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Claim sustained.

2. Carrier shall comply with this Award within thirty (30) days of the effective date.

Joseph A. Sickles
Chairman and Neutral Member

J. N. Sailor
Carrier Member

T. W. Goodell
Organization Member

3/19/81
DATE