

**Award No. 6164**  
**Docket No. 6093-I**  
**2-PC-I-'71**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

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**PARTIES TO DISPUTE:**

**LUTHER SELBY, JR., Petitioner**  
**PENN CENTRAL (NYC)**

**DISPUTE: CLAIM OF EMPLOYES:**

That the Carrier violated the current agreement by abolishing the position of Radio Maintainer, Job No. 117, worked by Luther Selby, Jr., at Sharonville, Ohio, with rest days of Sunday and Monday and in the same Bulletin, No. 2, dated March 23, 1966, re-establishing Job No. 117 with rest days of Monday and Tuesday.

That the Carrier compensate the claimant, Luther Selby, Jr., by honoring the continuous time claims submitted by Mr. Selby and supported by the Local Committee for all Sunday work performed by Mr. Selby since the dispute developed at the time and one-half rate.

That the Carrier compensate the claimant, Luther Selby, Jr., at the pro-rate for being deprived of work on Tuesdays of his normal work week since the inception of this dispute.

**EMPLOYES' STATEMENT OF FACTS:** These facts to remain the same as those submitted by System Federation No. 54, AFL-CIO (Electrical Workers) simultaneously with the New York Central Railroad. See Exhibit No. 1.

**POSITION OF EMPLOYES:** To remain the same as those submitted by System Federation No. 54, AFL-CIO (Electrical Workers) simultaneously with the New York Central Railroad. See Exhibit No. 2, and to include these conclusions. Due to Mr. W. A. Smith's statement:

"Mr. Selby, you are being screwed and you are not going to get kissed!"

See Exhibit No. 4. I conclude that Mr. Smith felt that he could stop any grievance that I might submit in this matter. I am a salaried employe and receive the overtime rate for work performed on Sundays and holidays only. Other than this I do not receive any pay at all regardless of the number of overtime hours I worked.

In summary, the Carrier reiterates that this claim has not been handled in accordance with the Schedule Agreement and the Railway Labor Act and, therefore, must be dismissed by your Board. In any event, the Carrier submits that an operational problem existed which necessitated the changing of the rest days of Job No. 117. The Carrier's action in this case was in accordance with Rule 1 of the Schedule Agreement. Furthermore, if your Board should find, contrary to the facts, that the Schedule Agreement was violated, any claim that the Claimant might have must cease on February 20, 1967, the date the Claimant was awarded Position No. 98.

In view of the foregoing, the Carrier respectfully requests your Board to dismiss or deny this claim.

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

The carrier or carriers and the employee or 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.

Parties to said dispute were given due notice of hearing thereon.

The Carrier in their submission to this Board state the following:

"Subsequently, a grievance and penalty time claim was filed on behalf of the Claimant, alleging that no operational problem existed which justified the changing of the rest days of Job No. 117 from Sunday and Monday to Monday and Tuesday. Such grievance was handled up to and including the District Engineer-Communications and Signals, the highest local official designated to handle grievances. Local Joint Submissions were prepared by the Assistant General Chairman, I.B.E.W., and the District Engineer for handling between the General Chairman and the Carrier's Final Appeals Officer. A copy of the Joint Submission is attached as Exhibit A. However, the claim was never docketed by the General Chairman for hearing and further handling with the Carrier's Final Appeals Officer."

The Employees, in rebuttal to this statement, state the following:

"In the Carrier's Statement of Facts they contend that the joint submission by the Assistant General Chairman, I.B.E.W., and the District Engineer, were not presented to the next higher officer designated to handle this case.

I contend that this case was presented to the Director of Communications, the next highest officer to handle this case. This was done prior to 1968, and to this date this office has never acted on this case, either to deny the claim or approve the claim for payment. I hereby request the Board to rule undue delay, and hear this case on its merits."

The employees admit that the dispute was not handled with the Carrier's Final Appeals Officer in keeping with the Agreement Rule 32(b), which reads:

"(b) Should the case remain unsettled after conference with the highest local official, at the point at which the grievance originated, a joint statement shall be prepared and signed by such local official and duly authorized local committee, or its accredited representatives, covering the facts, the employee's position and the position of such official, and submitted to the next higher official and general committee representative. If a decision adverse to the employee is rendered by the higher official and such decision is unsatisfactory, the duly authorized general committee, or its accredited representative, may then take the case to the next higher officials, in respective order, up to and including the highest authority designated to handle such matters."

The Railway Labor Act provides that a dispute has to be handled in the usual manner up to and including the top officer of the Carrier designated to handle disputes before it can be handled by this Board, as Section 3, First (i) reads as follows:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The subject matter of this claim was not handled with the highest officer of the Carrier designated to handle this dispute.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1971.