Award No. 6256
Docket No. 6094
2-C&EI-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

CHICAGO AND EASTERN ILLINOIS RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago and Eastern Illinois Railroad violated the current Agreement when it failed to properly notify Carman A. L. Justice within the time limit provisions of the Agreement and did not give reason for the disallowance of the time claim presented by Carman Justice.

2. That the Chicago and Eastern Illinois Railroad, hereinafter referred to as the Carrier, be ordered to pay Carman A. L. Justice, hereinafter referred to as the Claimant, eight (8) hours pay at time and one-half rate for June 9, 1969.

EMPLOYES' STATEMENT OF FACTS: Claimant presented to his foreman time card for eight (8) hours at time and one-half rate for June 9, 1969. This time card was subsequently returned to claimant. On June 10, 1969 the time card was presented to Mr. R. F. Songer, General Car Foreman, along with a signed statement from the claimant, Carman Justice, explaining the circumstances involved. Time card and statement were returned to Claimant with the following written on Claimant's statement, "No Overtime allowed. Your time slip declined. M. H. Kuhn (M.S.)" There was no reason given for the declination of the claim as presented. The appeal steps as set up by the Carrier were complied with by the claimant, Carman A. L. Justice. The Agreement, revised, effective July 15, 1944, as amended is controlling.

POSITION OF EMPLOYES: Article V, Carrier's Proposal #7 of the Agreement signed at Chicago, Illinois, August 21, 1954, reads in part as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe 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

ments for the denial of time claims submitted." (Award No. 4961, CM v C&EI, H. A. Johnson.)

Inasmuch as the claim was not progressed within the prescribed time limits, and further, inasmuch as it was appealed by the organization solely on the basis of Carrier's alleged violation of the time limit rules, it is not subject to adjudication on its merits. It is pertinent to point out, however, that in Award No. 4961, CM v C&EI, H. A. Johnson, the Board, in construing the Agreement between the parties hereto, said:

> "There is no provision in the Rules for overtime boards, but such boards are maintained on which employes desiring overtime list their names."

As stated in Award 4961 above, there is no rule regulating the assignment of overtime. Effort is made to distribute the overtime equally between those indicating a desire for such work; however, there are no agreement rules setting forth prescribed procedures for such distribution or requiring that overtime be equalized on a day to day basis. All that is required is an equal distribution of overtime. There is no showing in the record here of an unequal distribution of overtime. Accordingly, in the absence of a rule requiring that claimant be called in "turn" for overtime work, there is no basis under the agreement rules here controlling for a claim because claimant was not called to perform overtime work on June 9, 1969.

The claim is for payment at the time and one-half rate. In the event of a sustaining award, the appropriate penalty for work not performed is the pro rata rate — see Awards 4955 and 4956, CM v MKCS-JA, H. A. Johnson:

> "However pay for time not worked is at the pro rata rate."

Carrier's declination of the claim presented was timely. Petitioner was required under the applicable rule to take affirmative action within 60 days of date of Carrier's decision. No issue was raised as to the propriety of Carrier's decision within said 60-day period. It was too late to raise these technicalities in the appeal dated some four months from date of Carrier's decision. The time limit had then tolled and the matter was closed.

The facts of record applied to the Agreement rules here controlling require that the claim be dismissed for failure of the organization to comply with the time limit rules.

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

The carrier or carriers and the employe or 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.

Parties to said dispute waived right of appearance at hearing thereon.

The claimant submitted a time card on which he had written in 8 hours of work with indication that this was to be at overtime rates, for June 9, 1969, a day he was not scheduled to work and did not actually work. There is nothing

in the record to indicate whether this document was presented to the foreman with or without comment or explanation. The time card was returned to claimant and again we have no showing whether this was done with or without discussion or explanation.

A short time thereafter, Claimant forwarded the time card with an undated covering note explaining his claim to the General Car Foreman. This was returned to the Claimant with a short notation of rejection, but without a reason therefor and signed by someone other than the General Car Foreman.

The Petitioner cites Article V 1(a) of the August 21, 1954 National Agreement which it alleges is controlling and charges that Carrier's representatives did not comply with this clause in that the duly designated Management official to whom the claim was addressed did not reply to the grievance nor was a reason given for the disallowance. It invoked the last sentence of the provision, which reads: "If not so notified, the claim or grievance shall be allowed as presented." If the invocation of this provision is appropriate under the facts in the record, then the claim would be sustainable. See Awards of Third Division 10173, 14354 and 17227.

This case was commenced when Carman A. L. Justice presented a mechanical time card to this foreman. This card had written thereon that Mr. Justice had worked from 4:00 P. M. to 12:00 midnight on June 9, 1969. Mr. Justice was on vacation on June 9, 1969, (Carrier's Exhibit J) and this fact is not controverted anywhere in the record. Other than these markings on the card and identifying factors apparently automatically recorded on time cards for all employes, there are handwritten indications of eight hours worked with eight hours at time and one-half pay due. Obviously, all the handwritten items had been put on the card by Mr. Justice. The card was returned to the Claimant herein with no written statement of why this was done. Was the time card a claim or grievance?

The basic agreement dated July 15, 1944 provides:

> "RULE 30. — Discipline and Grievances.
>
> Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic, master car builder or shop superintendent, each in his respective order, by the duly authorized local committee or their representative, within ten (10) days. * * *"

The National Agreement dated August 21, 1954 amended the above quoted clause and it reads in part as follows:

> "Article V 1(a). All claims or grievances must be presented in writing by or in behalf of the employe involved, to the officer of the Carrier authorized to receive same within 60 days from the occurrence on which the claim or grievance is based. * * *"

On March 13, 1969, the Carrier wrote to the General Chairman, Brotherhood of Railway Carmen. The pertinent portions of the letter read as follows:

> Listed below is the information you requested * * * about proper appeal steps in the handling of claims and grievances * * *

Chicago Terminal: File with Foreman
Appeal to — R. F. Songer, Gen. Car Foreman
L. H. Hibbs, Gen. Car Inspector
E. A. Jones, Supt. Mech. Dept."

The Claimant, shortly after the return of the submitted time card, resubmitted same with covering note to R. F. Songer. There is nothing in the record to indicate that his claim had at any time been handled with his foreman. It is quite apparent that the foreman was bypassed by the grievant, and therefore he did not comply with the requirements of Rule 30 of the basic Agreement or Atricle V 1(a) of the National Agreement. If the time card constituted a proper claim or grievance, then the failure of the foreman to explain his disallowance in writing would have been the basis for the Petitioner's charge of violation of Article V 1(a) of the National Agreement, but nowhere in its submission or rebuttal does Petitioner take this position. It relies on the fact that the denial of the appeal to the General Car Foreman did not contain reasons therefor and was not executed by the duly designated Carrier official. In page 3 of its rebuttal, Petitioner sets forth:

"* * * the Local Chairman requested payment of this claim because:

1. The General Car Foreman did not answer the claim.

2. No reason was given for declining the claim."

On the basis of the record herein, it must be held that the time card profferred by the Claimant was not a claim or grievance within the meaning of the above quoted provisions of the Controlling Agreements. The first probative evidence of a claim or grievance was his note to the General Car Foreman. This was an improper procedural step on his part. This Board is not empowered to permit a variation from the written requirements of the collectively bargained agreements. Our authority is limited to interpretation, application and enforcement of that which the parties negotiated and agreed upon. We do not consider it necessary to point up to the Petitioner the value to all parties concerned that resolving claims and grievances should be at the first opportunity on the property. It is for this purpose that the procedure is clearly set forth and we will not undermine the process by considering a claim which had not been handled by the Claimant initially in the manner contractually required.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 13th day of March 1972.

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