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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6520
Docket No. 6380-I
2-REA-I- '73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute:

(Robert A. Ward II (Petitioner)
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(REA Express, Inc.

Dispute: Claim of Employee:

- (1) That when Petitioner (Union No. AT 265 - Lodge 1486) went on vacation on or about November 25, 1970, his tools were in the garage at REA National Airport locked up in two chests, a rollaway cabinet and top box bolted together and weighing approximately eight hundred pounds (800 lbs.). On or about Friday, November 27, 1970 when his fellow employee, J. S. Sisk, left on vacation they were still locked up (Exhibit I). On the nights of November 26, 1970, November 27, 1970, November 28, 1970, Petitioner's father and fellow employee found the doors to the supply cabinets locked and Petitioner's tool chest and tool box locked (Exhibit II). Petitioner's father left on November 29, 1970 for vacation and met Petitioner in Franklin, Pennsylvania.
- (2) On Thursday, December 3, 1970 at approximately 4 P.M. fellow employee, Carl Hall, went into the garage and there was a truck in there so he had to climb over the bumper of the truck and Mr. Ward's tool chest both going in and coming out. On Friday, December 4, 1970 the said Carl Hall saw that the tool chest had been moved, asked the mechanic if Ward had come and taken his chest and was told "I don't know but it is gone." (Exhibit III)
- (3) That on or about December 3, 1970 late in the evening Petitioner had returned to his home in Virginia from his vacation in Pennsylvania.
- (4) That on or about Friday, December 4, 1970 Petitioner returned to the REA Office at National Airport to pick up his pay check and learned that his tools were missing.
- (5) That on or about Monday, December 7, 1970 when he returned to work Petitioner made police theft report and reported the theft of his tools to his supervisor, Charles Rockwell, who promptly reported the theft to the Company and assured Petitioner that no further action was necessary on his part and that reimbursement was forthcoming.

- (6) That in or about January, 1971 the tools of Geary Coffman and Andrew Brown, fellow employees of Petitioner, were stolen and they were promptly reimbursed.
- (7) That thefts were rife at National Airport, Washington, D. C. at this time.
- (8) That previously, on or about September, 1970, Petitioner had made a complete inventory of his personal tools as required by Rule 38 of the Agreement between REA Express and its employees as represented by the International Association of Machinists and Aerospace Workers effective January 1, 1970 and the value of such tools as ascertainable amounted to \$1,297.17, plus the impact extensions which were listed but not then valued but which have since been replaced for about \$10.00; Phillips Offset P120 which were worth about \$2.50; Phillips Offset P340 which were worth about \$2.50 and Chains worth about \$25.00, so that the total loss was approximately \$1,337.17. (A copy of Petitioner's inventory is attached as Exhibit IVa and IVb).
- (9) That Petitioner made repeated oral inquiries of Charles Rockwell, District Manager of Washington, Maryland and Virginia and was informed he would be reimbursed for his tools.
- (10) On August 24, 1971, Petitioner made written inquiry of Mr. M. J. Wozniak, 433 West Harrison Street, Chicago, Illinois 60607 as to when he would be reimbursed for the stolen tools.
- (11) On October 1, 1971 he received answer to the letter to Mr. M. J. Wozniak from D. R. Lowe, Regional Manager Fleet Maintenance, stating that specific requirements for reimbursement had not been met and asking for additional information. (Letter attached as Exhibit V).
- (12) On January 18, 1972 Petitioner went to the undersigned attorney and on January 28, 1972 said attorney wrote to Mr. Lowe requesting what information was still necessary. (Exhibit VI). No written reply was ever received to this letter.
- (13) On February 14, Mr. John Jordan, Regional Manager Fleet Maintenance, 4900 Beech Place, Temple Hills, Maryland, telephoned said attorney requesting a copy of the letter of Mr. D. R. Lowe of October 1, 1971 which was sent to him on February 15, 1972, and he indicated he would take the matter up with an official who was coming from the home company.
(Exhibit VII)

- (14) On March 6, 1972 Mr. Jordan was called by said attorney and still no decision had been made.
- (15) On March 30, 1972 Mr. Jordan informed, by telephone, said attorney that REA had still not indicated when it would pay.
- (16) On April 12, 1972 said attorney visited Louis P. Poulton, Associate General Counsel of the International Association of Machinists and Aerospace Workers, and on April 13, 1972 in reply to Mr. Poulton's telephone call Mr. Pruett, Business Representative of the International Association of Machinists and Aerospace Workers, filed a grievance immediately (Exhibit VIII and Exhibit IXa, and Exhibit IXb) in an effort to obtain reimbursement for the company or some indication as to why reimbursement was turned down.

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 were given due notice of hearing thereon.

This claim is based on an alleged violation of Rule 38 of an agreement which reads as follows:

"The Company shall assume the cost risk for loss of employees' personal tools or major portion thereof on Company premises due to theft by break-in and entry or other circumstances acceptable to the Company. The Company's liability for such loss shall not exceed the actual cost of the tools stolen. It is understood that all employees must furnish the Company with a complete inventory of their personal tools, prior to the loss. It is further understood that whenever new tools are purchased, the employee must add them to the inventory list previously furnished."

The Carrier has denied the claim on the merits by asserting that the loss involved herein does not fall under Rule 38 and on the basis that the claim has not been perfected properly in terms of procedure.

Let us determine if the matter is properly before this Board.

Rule 34 of the agreement reads in part:

"(a) Should any employee subject to this Agreement believe he has been unjustly dealt with, or any of the provisions of this

Agreement have been violated, the claim or grievance must be presented in writing by or on behalf of the employee involved, to the supervisor or official of the Company authorized to receive same within twenty (20) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall, within twenty (20) days from the date same is filed, notify whoever filed the claim or grievance, (the employee or his representative, in writing, of the reasons for such disallowance. If a decision on the claim or grievance is not given within twenty (20) days, the matter may be automatically appealed to the next highest designated representative of the Company.

- (b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within twenty (20) days from receipt of notice of disallowance and the representative of the Company shall be notified in writing within that time of the rejection of his decision. Where a decision has not been made on an original claim or grievance within twenty (20) days, the claim may be appealed to the next highest designated representative of the Company within forty (40) days from the date the claim was filed.
- (g) R E A Express will designate to the International Association of Machinists and Aerospace Workers, not more than two (2) levels of appeal in handling claims or grievances after which they may be appealed to the Vice President, Industrial Relations.

The record is clear that the claim presented to this Board for adjudication has never been appealed to the Vice President of Industrial Relations in accordance with Rule 34. We must hold, therefore, that the instant claim is not properly before this Board.

We have held many times that we did not have jurisdiction to adjudicate claims that have not been presented in accordance with the procedures established by the parties. Under the Railway Labor Act, Section 3(i) and the Rules and Procedures of this Board, Circular No. 1, this Board has no jurisdiction over a claim which has not been handled on the property in the usual manner.

Claim dismissed.

A W A R D

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killean
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.