

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ Baltimore and Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employees:

1. Carrier violated Article V of the August 21, 1954, Agreement, and that, accordingly the claim should be allowed as presented.
2. That under the current Agreement, other than employees of the Sheet Metal Workers' Craft "boilermakers and carmen were improperly assigned to perform Sheet Metal Workers' work of constructing portable guard rails to be placed around the traction motor drop table and pit at the Baltimore & Ohio Chicago Terminal, Chicago, Illinois on April 12, 13, 14, 15 and 18, 1977.
3. That accordingly, the Carrier be ordered to additionally compensate the following employees, Sheet Metal Worker-Plumbers, G. Stauder, and F. Fazio in the amount of eleven (11) hours each at the straight time rate for this violation of the Agreement.

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 employees 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.

This claim charges that Carrier improperly assigned Boilermakers and Carmen to construct portable guard rails to be placed around the traction motor drop table and pit at Barr Yard Shop. Petitioner alleges that such work falls within the Sheet Metal Workers' Classification of Work Rule 65.

The Boilermakers and Carmen Organizations as interested third parties, were duly notified of the pendency of this dispute. The Boilermakers' Organization submitted a statement for the record; the Carmen declined to intervene in the case.

We will first dispose of Petitioner's contention that Carrier violated the terms of Article V, paragraph (a) of the August 21, 1954 Agreement reading, in pertinent part:

"... Should any such claim or grievance be disallowed, the Carrier shall, within 60 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 not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The claim here at issue was submitted by the Sheet Metal Worker Local Chairman Mazza to Carrier's Manager of Engineering King by letter dated June 1, 1977, postmarked June 3, 1977, and delivered (date stamped) on June 4, 1977, a Saturday. The letter shows an Engineering Department date stamp of June 6.

On August 3, 1977, Local Chairman Mazza wrote Mr. King, advising that the latter was in violation of Article V Section (a) of the August 21, 1954 Agreement and that the claim was being referred to the Organization's General Chairman.

Carrier denies that Article V was violated, arguing that Mr. King, the officer authorized to receive the claim, did not receive the claim until June 6, a Monday, inasmuch as his office was not open for business on Saturday and Sunday, June 4 and 5, respectively. Carrier asserts that "The certified postal receipt was not signed by either Mr. King or anyone in his office, but by some other person, most likely a clerk in the mailroom". Consequently, Carrier contends, the claim was not actually received or "presented" in Mr. King's office until June 6, the first day on which his office was open for business following the receipt of the claim in the mailroom. Hence, Carrier maintains, Mr. King's August 5, 1977 reply to the claim fully complied with the 60-day time limit provision of the Agreement. In this regard, Carrier calls attention to the fact that Local Chairman Mazza's letter of June 1 is date stamped as received on June 6 in the Engineering Department.

Carrier cites Second Division Award No. 4609 as illustrative of a case involving similar circumstances to those herein involved. In that case the Organization mailed an appeal dated September 20, 1962, a Thursday. The letter apparently arrived in Carrier's mail on Saturday September 22 or Sunday September 23. Since these were days on which Carrier conducted no business in that office, Carrier had no knowledge of the appeal until Monday, September 24. Carrier denied the appeal by letter dated November 21, 1962 and the Petitioner in that case contended that Carrier had not complied with the 60-day time limit set forth in Article V of the August 21, 1954 Agreement. The Board, in its Award No. 4609, sustained Carrier's position that the claim was answered within 60 days of the date on which Carrier first had knowledge or was notified of the appealed claim. The Board stated:

"Award No. 3690 of this Division, inter alia, says, '... Webster's New Collegiate Dictionary defines the verb 'notify' as meaning 'to give notice to; to inform'. One is not informed -- notice is not given to him -- until he receives it.'"

"Applying the reasoning and definition found in Award No. 3690, the Employees' procedural argument is erroneous in our opinion, because the claim before us was denied by the highest officer handling claims for the Carrier within 60 days of his having been 'notified' that an appeal was being made to him."

Petitioner relies on Third Division Award No. 14695 (Ives) which stated:

"The National Dispute Committee Division No. 16, dated March 17, 1965, incorporated into Award 13780, held that the claim should be considered 'failed' on the date received by the Carrier. Consequently, the date of receipt determines the 60 day time limit, which commences to run from that date. Subsequently, Awards have held that the Carrier must stop the running of the time limit by mailing or posting the notice required within the 60 days of the date that the claim was received. (Award 11575 and Second Division 3656)."

In our view, Third Division Award 14695, when considered in conjunction with Second Division Award 4609 does not support Petitioner's claim that Mr. King's denial letter was untimely. Predicated on Award 4609, Carrier's designated official was "notified" of the claim on June 6. His denial letter of August 5 fell just within the 60-day limit.

With respect to the merit of the claim, both Carrier and the Boilermakers' Organization contend that this Board has no jurisdiction in this matter. Their reason is that Petitioner has not complied with the provisions of a Memorandum of Agreement covering jurisdiction, requiring that jurisdictional disputes be first handled between the representatives of the respective Organizations prior to any handling of the dispute with the Carrier. Accordingly, they assert, this appeal to the Board is premature and this claim should, therefore, be dismissed because of such non-compliance with the jurisdictional dispute settlement procedure outlined in the Memorandum of Agreement.

The situation before this Board is that two Organizations are claiming the exclusive right to perform the work at issue. Petitioner has produced no evidence that Carrier has unilaterally changed an established assignment of work. Absent such showing, this matter becomes a jurisdictional dispute, governed by the Memorandum of Agreement. The record is clear that Petitioner has not complied with the requirements of the Memorandum of Agreement for settlement of the dispute by the involved crafts on the property. Under the circumstances, we have no alternative but to dismiss the claim.

A W A R D

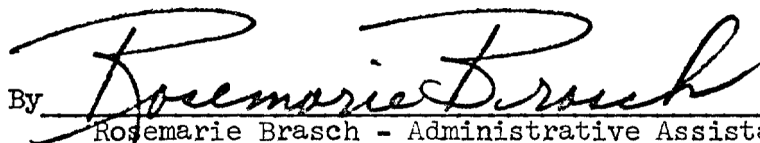
Claim dismissed.

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Award No. 8268
Docket No. 7958-T
2-B&OCT-SM-'80

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of March, 1980.