

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
and Canada
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. That the Chicago and North Western Transportation Company violated the terms of the controlling agreement when the Division Manager did not make reply to Local Chairman Balk's claim dated June 7, 1979, within the prescribed time limits.
2. Carman Welder Sam Jones, Belvidere, Illinois, was unjustly dismissed from service on November 22, 1978.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Carman Welder Sam Jones, and make him whole for all time lost, plus all benefits that are a condition of employment unimpaired, in accordance with Rule 35(h).

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 primary issue in this dispute is the Organization's contention that the Carrier violated Article V(a) of the August 21, 1954, National Agreement, which states:

"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 occurrence on which the claim or grievance is based. 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 (the employe 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 contention of the Carrier as to other similar claims or grievances."

The record shows that on June 7, 1979, the Local Chairman of the Organization filed a claim with the Assistant Vice President and Division Manager, contending that the Carrier violated the Agreement in its dismissal of Carman Sam Jones, who, the record shows, was dismissed from Carrier's service on November 22, 1978. The Local Chairman did not receive a reply to his letter of June 7, 1979, within sixty days and contended that because of not being notified within sixty days, the claim must be allowed as presented. The General Chairman wrote to Carrier's Director of Labor Relations on August 28, 1979, in which he again alleged:

"It is beyond dispute that A.V.P. and Division Manager R. L. Johnson failed to reply to Mr. Balk's letter of appeal dated June 7, 1979, within the sixty (60) day time limit prescribed in Article V(a) of the August 21, 1954 agreement, which reads as follows:

(Article V(a) quoted above)

Therefore the Claimant in this case is entitled to compensation for all time lost, and reinstatement to the Carrier's services."

Article V(a) of the August 21, 1954, National Agreement has been the subject of numerous awards of Divisions having jurisdiction over such disputes. Under the provisions of the rule, we consider it entirely proper for the Board to carefully examine the rules relied upon by the Petitioner and the facts upon which the claim is based. It is clear that the claim in our present dispute was not "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 occurrence on which the claim or grievance is based", as required by the first sentence of Article V(a). Third Division Award 16164 involved a dispute where the claim was not filed within sixty days of the occurrence on which the claim was based, and the claim was never responded to by the Carrier in the handling of the dispute on the property. In Third Division Award 16164, which Award dismissed the claim, the following is quoted from Third Division Award No. 1532:

"The claim in this case was first presented on March 5, 1955, which was in excess of 60 days after January 1, 1955. There is no dispute in regard to the late filing of the claim. The Claimant contends that the Carrier failed to raise the question that the claim was not filed within the 60 days on the property and by so doing waived this defense...

This is a case under an Agreement that requires the filing of the claim within a specific time. There was no claim here because it was not filed within the time required, and there being no claim, it was not necessary to deny same within the 60 day period."

Also, Third Division Award No. 16164 quotes from Award 15631:

"... We further state that since no valid claim existed ab initio, the fact that the Carrier failed to give a reason for declining

the claim is of no consequence. Since the claim was invalid in the beginning, we have no right to consider Carrier's later procedural error nor do we have a right to consider the merits of the case. We will dismiss the claim."

In Third Division Award 16164 reference is also made to Third Division Award 9684, where it was concluded:

"... Since the claim was not properly filed in the first instance we do not reach the question of whether the second sentence of the above quoted provision (Article V(a) of the August 21, 1954, National Agreement) was complied with, nor do we reach the merits of the dispute."

We are in agreement with Third Division Award No. 16164 and the other awards cited therein.

It is also well settled that the burden is on the Petitioner to present facts sufficiently specific to constitute a valid claim.

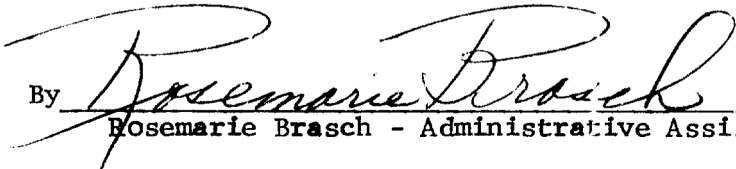
The claim in our present docket must be dismissed.

A W A R D

Claim dismissed.

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 24th day of February, 1982.