Award No. 3065
Docket No. 2674
2-L&N-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the Carrier failed to comply with the procedural provisions of the current Agreement and accordingly:

(a) Carman Helper H. Brown is entitled to be additionally compensated for 46½ days at the straight time Helper's rate;

(b) Carman Helper C. J. Giarrusso is entitled to be additionally compensated for 18½ days at straight time Helper's rate less the amount ($155.73) received.

EMPLOYES' STATEMENT OF FACTS: On January 16, 1956 the organization local chairman at New Orleans wrote the carrier's car foreman filing claims in favor of Carmen Helpers W. Brown and C. J. Giarrusso, hereinafter referred to as the claimants. Copy of that letter is submitted herewith and identified as Exhibit A.

Nothing was heard from the management until March 23, 1956, or 67 days from date of original complaint. Copy of carrier's letter is submitted herewith, identified as Exhibit B, wherein the claim was declined.

The dispute has been handled with each carrier official provided for in Rule 32 up to and including the director of personnel, without a satisfactory settlement being reached.

The agreement of September 1, 1943, as amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier did not comply with the terms of paragraph (a) of Article 5, Carrier's Proposal No. 7 of the May 20, 1955 Agreement when they failed to disallow or notify the organization representative within sixty days from the date of his letter, identified as employes' Exhibit A.

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 foregoing rule prohibits the presentation of a claim or grievance retroactively for more than a period of 60 days from the date of the occurrence on which the claim or grievance is based. In the claim involved in this dispute, it was presented for a period preceding the time limitation set forth in the agreement. When the master mechanic failed to make proper reply, payment of claim was authorized to the extent allowable under the agreement, i.e., retroactively to the 60 day limitation. Any period in excess of 60 days is automatically voided under the terms of the agreement.

While the master mechanic should have notified the local chairman as to the status of the claim within 60 days, it is the position of carrier that having failed to do so does not justify payment of a claim that is not allowable under the provisions of the agreement. If the contention of the employes were correct that any claim presented, whether within or beyond the provisions of the agreement, must be allowed, then one employe could file request that he be given another employe's watch and failing to decline such request within 60 days, delivery of the watch would be automatic.

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.

The parties to said dispute were given due notice of hearing thereon.

On January 16, 1956 claim was filed for Brown for 46½ days between May 12 and July 14, 1955 and for Giarrusso for pay on 18½ days between October 24 and December 14, 1955. The General Foreman did not give notice of declination until March 23, 1956.

Article V, Section 1(a) of the agreement of May 20, 1955 is in part as follows:

"Should any claim or grievance be disallowed, the carrier shall, within 60 days from 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, * * *."

The carrier allowed the claim for 60 days prior to the date filed and the employes now contend that the foregoing provision requires that it be allowed in toto. That action of the carrier was taken on the basis of a provision in Section 3 of the same Article V, which is as follows:

"However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof."

That does not specify any particular kind of allowance, so it appears to apply to allowances by failure to notify of disallowance within 60 days and constitutes a restriction upon the retroactivity of monetary claims regardless of how allowed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1958.