

Award No. 4659

Docket No. 4666

2-AT&SF-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—COAST LINES—**

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier did, by virtue of the fact that they improperly refused to reimburse his expense money for the month of August, 1961, inconvenienced Mr. R. L. Feagins and denied him the use of \$217.51 during the period in question.

2. That accordingly the Carrier be ordered to pay Mr. R. L. Feagins interest in the amount of one per cent per month on the sum of money that was withheld from Mr. Feagins, two hundred seventeen dollars and fifty-one cents (\$217.51), from September 1, 1961 until such date as he was reimbursed.

EMPLOYEES' STATEMENT OF FACTS: In the month of August, 1961, Mr. R. L. Feagins, hereinafter referred to as the claimant, was regularly employed by the Atchison, Topeka and Santa Fe Railroad Company, hereinafter referred to as the carrier, in the capacity of a communications department helper-apprentice. Since that time the claimant has been promoted to the position of electronic technician. In that month of August, 1961 the claimant received various assignments that took him away from his home station; and in accordance with existing provisions of the Agreement and the rules of the carrier he submitted his expense account for that month to the proper carrier officer. The carrier officer took exception to the amount of expenses incurred by the claimant and in a series of exchange of correspondence informed the claimant that his expense account would not be paid until the claimant had revised and reduced the amount of his expenses for that month. This action by the carrier officer was completely contrary to the provisions of the agreement which states in Rule 11(c), which we quote herein for your ready reference.

"Rule 11(c)—When meals and lodgings are not provided by the Company actual necessary expense will be allowed."

The exchange of correspondence between the claimant and the carrier terminated with the carrier's letter of September 25, 1961 wherein the carrier

Mr. Landreth withheld his decision until after the conference on February 27, 1962, which was held within the 60 days provided by Rule 33 for Mr. Landreth to render his decision. As hereinbefore explained, the delay subsequent to February 27, 1962, while concurred in by the carrier, was at the request of General Chairman McLennan. The case was settled on May 11, 1962, and the delay in making payment subsequent to that date was due to Claimant Feagins' failure to resubmit his expense account which was necessary to support the carrier's voucher issued in payment. It is therefore clear that the claim for expenses was handled strictly in accordance with the time limit provisions of Rule 33 and that the Employees' contention that the Carrier excessively delayed its settlement is completely unfounded.

In conclusion, the carrier asserts that the claim is wholly without merit or support under the governing agreement and should be either dismissed or denied for the reasons previously set forth herein.

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 were given due notice of hearing thereon.

Claimant submitted his expense account of \$217.51 for August, 1961, under Rule 11(c), which entitles him to reimbursement of necessary expense away from home when meals and lodging are not provided by the Carrier. The account was rejected and returned to him by the Superintendent of Communications as excessive.

On November 8, 1961, a claim for that amount was filed with the Superintendent of Communications, subsequently denied by him, and appealed to the General Manager on January 2, 1962. It was discussed in conference on February 27th, and the General Chairman requested an extension of the time limit to permit further investigation. On April 16th he wrote the General Manager that he had verified Claimant's expenditure of the \$217.51 and requested that it be paid with interest at the rate of 3% per month.

This was the first mention of interest in the record, the claim as presented to the Superintendent having been for Claimant's expenditures, without any claim for interest to date of payment.

In conference on May 11th, 1962, confirmed by letter of May 14th, the General Manager stated that, while he considered the expense account exorbitant he would pay it on the General Chairman's assurance that the expenditures claimed had actually been made; but he denied the interest claim.

Instead of appealing the denial of interest to the Vice President, the Carrier's highest officer designated to handle grievances, a new claim was presented to the Superintendent of Communications on June 22, 1962, for interest at the rate of 1% per month, denied by him on June 25, duly appealed to and denied by the General Manager and Vice President, and then filed here.

As noted above, interest was not mentioned in the original claim but was first claimed on appeal, which is not in accordance with Rule 33; and instead of being further progressed as provided by that Rule, the 3% per month interest item was abandoned, and the 1% interest claim initiated, which came too late.

The claim is not, therefore, properly before the Board on the merits, not having been initiated or progressed on the property in accordance with Rule 33. However, no Rule or established practice has been cited as providing for interest, or as having been violated by the Carrier.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.