

Award No. 4955
 Docket No. 4831
 2-MKCSJA-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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. 3, RAILWAY EMPLOYEES'
 DEPARTMENT, AFL-CIO (Carmen)**

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Carrier failed to comply with the provisions of the time limit rule governing the handling of claims and grievances.
2. That under the provisions of the current agreement, the Carrier, in violation of the Agreement, allowed a foreman to perform carmen's work on August 27, 1963, at the 15th Street area in Kansas City, Missouri.
3. That accordingly the Carrier be ordered to additionally compensate Carman Oscar Owen three and one-third (3½) hours at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: At Kansas City, Missouri, the Milwaukee-Kansas City Southern Joint Agency, hereinafter referred to as the carrier, maintains a car repair track whereat is employed, among other carmen, Oscar Owen, hereinafter referred to as the claimant.

On August 27, 1963, Foreman J. R. Ince, inspected and classified the following cars located on side track near Black Sewall and Bryson Manufacturing Company:

17454	18417	18479	18082	19362
18066	19304	19031	17631	25422
25585	18481	18035	19011	17863

To this date, General Car Foreman A. L. Westman has never written, advising his denial of the claim. Further, he (Mr. Westman) told me orally, in his office at Kansas City, Missouri, that he never denied this claim contained in my letter to him dated September 18, 1963.

This rule does not prohibit foremen in the exercise of their duties to perform work."

and they have also advanced the allegation that the claim is in default of the time limit rule. Actually the monetary damages of the claim are of lesser significance and subservient to the main question which is that General Chairman Schooley has embarked on a course designed to hamper and prevent our Foremen from properly performing their supervisory duties.

The argument of the organization, that the claim is in default of the time limit rule is rather shallow, as evidenced by the following facts:

Under date of September 18, 1963, the organization advised General Car Foreman A. L. Westman of this dispute; and because no time cards or time claims were attached to such letter, Mr. Westman replied to General Chairman Schooley on September 30, 1963, advising him that no time claim had not been received with the letter. Mr. Schooley deliberately failed to reply to such letter until November 26, 1963, and at that time he alleged that the time limit rule had not been observed and that if the letter of September 30, 1963, was to be considered as a rejection of the claim, then that decision was also rejected for further appeal.

In the subsequent handling of this claim, the organization contended that none of the cars involved in the claim had been classified, prior to their being placed for loading; that they had been switched from other adjacent industries. Carrier's investigation and check of the records revealed that all of the cars came from the East Kansas City Yard, having been carded for disposition at Fifteenth Street, which is not contrary or in violation of the carmen's agreement, and that none of the cars came from industry tracks in the Centropolis District.

Organization is contending, contrary to the past history on these properties, that carmen should have the exclusive right to pass upon the condition of cars and to make all decisions as to their acceptability for various types of loading.

Rule 27 does not give such exclusive rights to the carmen and such rule does not prohibit a foreman, clerk, yardman or yardmaster from looking at a car to determine if it is clean or acceptable, and this certainly is not mechanics' work and has never been recognized as carmen's work.

Assistant General Car Foreman Ince did not inspect the car mechanically and he did not order any mechanical repairs to such cars. The sustaining of this claim would enlarge upon the schedule agreement, specifically Rule 27; and because this Board is not authorized to revise or enlarge upon the clear wording of Rule 27 as the organization requests, the claim should be denied.

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.

On September 18, 1963, the local chairman submitted the claim in writing to the general car foreman. On September 30th the latter acknowledged its receipt and added:

"I did not receive time claim with this letter."

On November 26, 1963, the local chairman, who had then become the general chairman, progressed the claim to the general superintendent not only upon the merits, but also upon the ground that the claim had not been denied within sixty days of its presentation, as required by Article V, paragraph 1 (a), of the August 21, 1954 Agreement.

In the general superintendent's denial letter, dated December 17, 1963, he said:

"In General Car Foreman Westman's letter of September 30th, 1963 he advised you that he **had not received the actual claim** in this matter.

* * *

If you intend to pursue your argument that the claim was not properly denied within the time limit, then we have no alternative other than to advise you that the claim was not properly filed within the time limit. It appears that you intentionally delayed in replying to Mr. Westman's letter of September 30, 1963."
(Emphasis ours.)

Thus both parties raise the time limit rule,— the Claimant for want of a timely denial, and the Carrier for want of a timely claim.

The Carrier argues here that the general foreman's letter constitutes a denial of the claim upon the ground that its presentation was insufficient "because no time cards or time claims were attached" to the claim letter. But his letter made no attempt to dispose of the claim; on the contrary, it expressed his belief that the claim was not complete without what he called the "time claim". The general superintendent's denial letter to the general chairman confirms this by saying that the general car foreman "advised you that he had not received **the actual claim** in this matter;" and seems to impute duplicity to the general chairman in not stating at once that he intended to stand upon the sufficiency of the claim as presented.

The Carrier did not in its Submission, or on the property so far as the record shows, state why it considered that the written claim did not constitute "the actual claim in this matter;" but sets forth in its Rebuttal a copy of its Form JA-301, which it states is "required to substantiate a payroll allowance" and has always been submitted with claims. The form has blanks to fill in for "Clock No.....," "Time Worker," "Car or Locomotive," and "Work done". It appears to be the form prescribed by the Carrier for particulars as to time, place and nature of work actually performed, apparently for payroll purposes. We find no requirement in the national agreement of

August 21, 1954 or in the current rules that such time slip constitutes a necessary part of the written claim required by the national agreement. We cannot, therefore, find that the presentation of the claim was insufficient, or that it was denied within the time limit prescribed by the national agreement.

We must therefore sustain the Organization's contention, here stated as part 1 of the claim, that the Carrier failed to comply with the time limit rule governing the handling of claims; and accordingly the actual claim, here stated as parts 2 and 3 of the claim, must be allowed without reference to the merits, and without constituting a precedent or waiver of the Carrier's contentions as to other similar claims or grievances. However pay for time not worked is at the pro rata rate.

AWARD

Claim sustained to the extent indicated in the Findings, pay to be at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1966.