



Award No. 5078

Docket No. 4347

2-N&W-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when they refused to pay Electrical Crane Operator T. E. Pilson holiday pay for the recognized holiday (Christmas Day) December 26, 1960, and the recognized holiday (New Years Day) January 2, 1961.

2. That accordingly Electrical Crane Operator T. E. Pilson be compensated eight (8) hours pay at the pro rata hourly rate of his position for each day.

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.

The Carrier has raised the issue as to the jurisdiction of this Board to hear the merits of this dispute, inasmuch as there is the question as to whether the procedural steps were complied with in accord with Rule 35 of the Agreements, which provides in part as follows:

"Grievances involving application of any of the provisions of the rules of this agreement shall be submitted by the duly authorized committee to the departmental foreman. Further handling must be with the general foreman. If a grievance is referred to the General Chairman on account of not having been settled by the General Foreman, further handling must first be with the Master Mechanic."

Carrier's position as to the jurisdictional question is based on the premise that the claim was not initially presented by the Local Chairman and/or Committeeman, as required by said Rule 35, but, in the instant case, was initially presented and the first progression made by General Chairman McDaniel.

The Organization's contention is that the General Chairman could initially make the claim because he is the head of the duly authorized Committee referred to in Rule 35, and also by virtue of Article V of August 21, 1954 Agreement, the claim as handled by him is in accord with Section 1 (a) of said Article V:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

There is no question that the claim as presented was within the mandatory procedural requirements of said Section 1 (a) of Article V of the '54 Agreement. Thus, we must look to Rule 35 of the Agreement between the parties to see if there is a procedural defect in the presentation of this claim.

The burden is on the Carrier to prove that Rule 35 of the Agreement was violated. Carrier argues that the claim was not initially presented by the "Local Chairman and/or Committeeman", whereas the rule says claims shall be submitted by the "duly authorized Committee." Carrier argues that the General Chairman as in this instance, should enter the progression claim at the Master Mechanic level, as is the practice on Carrier's line.

Examination of said Rule 35 shows that there is nothing in said Rule requiring the General Chairman to enter the claim progression at the Master Mechanic level. Further, Carrier has failed to show that the General Chairman here is not a member of the duly authorized Committee, even though past practice on Carrier's line indicates claims are normally not initially handled by the General Chairman. Therefore, Carrier's objection to this defect in the procedural requirements is without foundation and is rejected by this Board.

As to the merits, Carrier asserts that claimant did not comply with the provisions of Article IV of '54 Agreement and thus he wasn't "available for service" as required by Section 3, and "Note" therein of Article III of '60 Agreement. This contention was rejected in Award 5061, and for the reasons stated in that Award, this claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1967.

[See Award 5061 for Carrier Members' dissent.]

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