Award No. 5524
Docket No. 5166
2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier failed to comply with the procedural requirements of Article V of the August 21, 1954 Agreement and accordingly the claim shall be allowed as presented.

2. That the Carrier, since December 8, 1964, has continued to violate the current agreement, in particular Rule No. 117, at the Burnside Shop, by assigning other than Electrical Workers to do Electricians work. This was submitted as a continuing claim.

3. That accordingly the Carrier be ordered to restore the installation of Wiremolding at the Burnside Shop to the electrical workers and compensate the electrical workers at this seniority point for every hour that this work is being performed by other than electrical workers, at the rate of time and one-half.

EMPLOYES' STATEMENT OF FACTS: Electrical workers at the Burnside Shop seniority point, as listed on the 1965 seniority roster, hereinafter referred to as the Claimants, were employed by the Illinois Central Railroad Company, hereinafter referred to as the Carrier.

Claimants' duties are to perform all work coming under the Special Rules Classification of Electricians and all other work generally recognized as Electricians' work.

Prior to the commencement of the installation of wiremolding in the MU Cars at the Burnside Shop, Carrier informed Claimants that there would be a considerable amount of overtime involved in the work mentioned, as this Wiremold was to be placed in each and every MU Car on the property and that each car would be equipped with an intercommunication system.

Second Division in Award 4086 denied a claim saying in part:

> "Each claimant worked and was paid for the day to which his part of the claim relates, so that he can have sustained no financial loss. There is no contention that the circumstances were such on any of the six occasions that an additional telephone maintainer would have been necessary if the supervisor had not performed the item of work claimed, and no claim is presented by such other telephone maintainer. The claims must be denied."

There is no penalty rule applicable to the present dispute and the penalty requested by the union could not be granted without amending the agreement between the parties, an act beyond the power of the Division. Accordingly, the Division must deny the claim even if a claim identifying the claimant was filed and a violation had occurred.

SUMMARY

The company has shown that the union has failed to file a proper claim and that the claimants were not reasonably identified. The Board should dismiss the claim on this basis.

The company, in considering the merits, has shown that wire mold by failing to fit in the definition of conduit was not reserved exclusively to the electricians by virtue of the agreement. Moreover, the company has shown that carmen, not electricians, have installed wire mold in the past. On these points, denial of the claim is warranted.

The company has further shown that even if the claim were not defective and even if the agreement had been violated, the monetary claim could not be sustained. No electrician at Burnside lost compensation by virtue of carmen installing wire mold, and no electrician at Burnside would be entitled to penalty, as claimed.

We ask the Board to sustain the company's position by denying the claim.

(Exhibits not reproduced.)

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.

Each of the parties hereto claims a violation of the following provisions of Article V of the National Agreement of August 21, 1954:

> "(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier author-

ized to receive same, within 60 days from the date of the 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 or grievance (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 contentions of the Carrier as to other similar claims or grievances.

* * * * *

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employes and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3, Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

The Employes assert that the claim must be allowed because of the failure of Carrier officers to state in writing the reasons for disallowing the claim within the 60-day time limit of the foregoing rule.

The Carrier asserts that the claim as originally presented on the property was defective because it failed to identify the Claimants and to specify dates of alleged contract violations; that, therefore, Carrier's failure to reply within the 60-day limit was no violation of Article V. Further, Carrier urges dismissal of the claim by the Board on the grounds that it does not meet the requirements of the rule governing identity of the employes involved for any particular dates on which the alleged violations occurred.

The following facts of record are deemed relevant and material in disposing of the foregoing procedural points:

1. The claim as originally filed by the Local Chairman with the Shop Superintendent under date of January 5, 1965, did not name any claimants but requested certain compensation for all Electrical Workers holding seniority at the Carrier's Burnside Shop, based upon an alleged rule violation beginning on December 9, 1964.

2. On March 10, 1965, the Local Committee wrote to the Superintendent alleging a violation of paragraph (a) of Article V, for his failure to comply with the 60-day time limit, and demanding allowance of the claim.

3. On April 7, 1965, the Superintendent replied, stating inter alia, that no valid claim had been presented because of the failure of the Committee to identify the employes involved and the date or dates

upon which the alleged violations occurred; that, therefore, the Carrier was not bound by the 60-day time limit provision of the rule.

Thus, the sole procedural issue under the foregoing facts is whether or not the claim originally filed was defective and, therefore, void, for failure to specify the employes involved under the language of Article V.

The question of what constitutes compliance with the rule requirement that all claims must be presented in writing ". . . by and on behalf of the employe involved, . . ." has been answered by the Board on many occasions with predictably conflicting results. Some decisions have held that the claimants must be specifically named. (Awards 2–3576, 3–9250, 3–9785); others that they be referred to in such a way that claimants can readily and definitely be ascertained. (Awards 2–3014, 2–3688.) It seems to us that the degree of specificity required to meet the minimal test of the rule is that the employe involved either be named or designated with sufficient particularity to be readily identifiable in order to prevent further dispute over who the proper claimants are in a given case. (Cf. Third Division Award 14468.)

Applying the foregoing criteria to the case at hand, the Board finds the claim as originally filed fails to meet the test of specificity. That claim neither named nor otherwise designated with any particularity those employes involved, the amount of compensation to which each was allegedly entitled, nor the dates upon which the alleged continuing violations occurred. What this Board said in Award 3549 (Referee Stone) is appropriate here:

> "This claim as submitted is so vague, indefinite and uncertain as to make it apparently impossible to compute with certainty the amount intended to be claimed, and, if computed, it would be impossible to determine with certainty the names or identity of the several claimants in whose behalf the claim was intended to be presented and the specific amount intended to be claimed in behalf of each.
>
> The first requirement of the Time Limit Rule is that a claim or grievance be presented in writing by or on behalf of the employe involved. When there is no identifiable claimant or ascertainable amount claimed there is no claim which can be allowed by the Carrier or sustained by the Division."

We conclude, therefore, that since the claim originally submitted was fatally defective and void, the fact that the Carrier failed to decline it within the 60-day time limit is not material (Cf. Third Division Award 15631). Accordingly, the instant claim will be dismissed without prejudice to the positions of the parties on the merits.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of September, 1968.

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