

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 156, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(The Long Island Rail Road Company

Dispute: Claim of Employees:

1. That the Long Island Rail Road Company violated Article V of the August 21, 1954 Agreement when the Carrier's highest officer, Mr. W. L. Schlager, Jr., failed to decline, in writing, the claim in behalf of Electrician R. C. Dee for service rendered on Sunday, June 18, 1972 in the amount of six (6) hours. Claim was submitted to Mr. Schlager on October 16, 1972, acknowledged by Mr. Schlager on October 26, 1972 and denied by Mr. Schlager 64 days later on December 19, 1972.
2. Without waiving the employes' position with respect to the Long Island Rail Road Company's violation of Article V, Electrician R. C. Dee was deprived of the double time rate of pay worked on Sunday, June 18, 1972 for six (6) hours when he was called to work on a fire at S.S.-PBO2, Sunnyside.
3. That, accordingly, Electrician R. C. Dee be compensated at the double time rate of pay instead of the time and one-half rate he received for work performed on Sunday, June 18, 1972.

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.

The substantive aspects of this claim have received extensive consideration by Public Law Board No. 790 and this Division of the National Railroad Adjustment Board, (Awards 6508, 6548, 6549, 6550, 6551, 6552, 6553, 6554, 6648, 6649, 6650, 6652, 6653, 6654, 6655, 6660, 6662, 6664, 6665, 6666, 6667, 6668, 6669 and 6670), and those facets of the dispute must by now be considered to have been laid to rest. Award 6662 set forth the guidelines to be applied in consideration of the merits of this claim as follows:

"The language in Article VII is clear, meaningful without any discernible ambiguity. It says the number of 'employees regularly assigned to Sunday work at the present time shall constitute the maximum number of employees who may be so assigned without penalty' (Emphasis added). 'Present time' refers to the date when Article VII became effective, in this case January 15, 1971. The maximum number on that date was 59; it remains 59 as long as Article VII in its present form continues to be an accepted rule; that number is never exhausted for all time; it is exhausted only on those Sundays when 59 are assigned to work."

At no time in its handling of the claim on the property nor in its submission or rebuttal to Carrier's Ex-Parte Submission, does Petitioner controvert, with probative evidence, the statement of Carrier's Assistant Chief Engineer-Power in his denial of claim letter to Petitioner's General Chairman dated August 31, 1972 (Carrier Exhibit No. 1) quoted on page 3 of Carrier's Ex-Parte Submission to the effect that:

"If the Agreement were to be interpreted as you contend, this man still would not be entitled to double time. The number of E.T. employees working on Sunday, June 18, 1972 was not greater than the number of E.T. employees working on Sunday, January 17, 1971 which was the qualifying Sunday for this rule..."

Petitioner merely avers, on page 3 of its Rebuttal, that, "the Claimant herein is in excess of such maximum who were assigned to Sunday work on the date Article VII became effective..." This does not satisfy its burden, set forth hereinabove, and in adhering to the Findings of our Award 6662, the Claim would be denied.

However, as shown in the first item of the "Statement of Claim", Petitioner invokes an alleged violation of Carrier of Article V of the August 21, 1954 Agreement as a basis for an Award sustaining this claim, in that the written denial of claim by Carrier's highest officer was issued sixty-four days after presentation of appeal to him by the Organization, citing the following provisions of the referred to Article V:

"... 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 employe 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."

Carrier, in turn cites paragraph (b) of said Article which reads:

"It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose."

and avers that an agreement waiving time limits for handling of the claim on the property referring to letter of Petitioner's General Chairman dated December 12, 1972 (Carrier Exhibit No. 19) in which the following request is made; ..." due to our strike against the Long Island Rail Road, it is our wish at this time to waive all time limits on same until this strike is rendered." Carrier's highest officer replied on December 20, 1972: "the non-op strike currently in progress has diverted both parties from their normal schedules; and, therefore, in observance of your request, and in compliance with the usual and customary on-property practice in instances of this nature, the time limit provisions of the controlling agreement with respect to handling of claims and grievances at all steps shall be waived for the duration."

Petitioner argues that the Agreement to waive time limits was exclusively with reference to the three claims specified in the General Chairman's December 12, 1972 letter and the claim herein was not one of them. Petitioner does not advert to Carrier Exhibit No. 18, incorporated by reference in its Ex-Parte Submission, in which the General Chairman, in a letter to Carrier's highest officer, dated July 23, 1973, states:

"Due to the fifty (50) day strike on the Long Island Rail Road starting November 30, 1972, the mutual waiving of the time limit provisions of the Controlling Agreement were further extended to include all on-property cases." (Emphasis supplied)

Thus it appears evident that an agreement in accordance with Article V(b) of the August 21, 1954 Agreement had been entered into and such was applicable to the claim herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of July, 1974.