

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MAINE CENTRAL RAILROAD COMPANY

PORTLAND TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Maine Central Railroad Company that:

(a) the Carrier violated the terms of the Telegraphers' Agreement when and because on December 11, 1949, it required C. E. Dunn to work more than two (2) hours overtime without a thirty (30) minute meal period; and

(b) in consequence of said violation the Carrier shall now additionally pay to C. E. Dunn thirty (30) minutes at time and one-half rate of the position worked, which thirty minutes represents the meal period not afforded.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of February 18, 1943, hereinafter referred to as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Tower "B", Waterville, is a continuously operated office or station. The personnel of and the assigned hours at Tower "B" are:

E. J. White	7:00 A. M. to 3:00 P. M.
C. E. Dunn	3:00 P. M. to 11:00 P. M.
Employee "X"	11:00 P. M. to 7:00 A. M.

Because of illness of Employee "X", who was due to go on duty 11:00 P. M., December 10, 1949, C. E. Dunn was instructed to continue on duty 11:00 P. M., December 10, to 3:00 A. M., December 11, and E. J. White was notified to report for duty 3:00 A. M., December 11, and continue through his regular tour of duty, or to 3:00 P. M. In short, each, Dunn and White, was required to work four hours overtime. Meal periods were not allowed. Eventually, Mr. White was paid for the meal period not allowed, but Mr. Dunn's claim was denied thusly:

"Claim of C. E. Dunn is not a proper one, as Mr. Dunn did not make claim for compensation within thirty days of date on which service was performed, as required by Rule 27."

(Carrier's letter, January 31, 1950.)

was paid, as claimed, eight hours at pro rata rate, plus four hours at rate of time and one-half.

2. Operator Dunn made no claim for an additional thirty minutes' time, either on his "Daily Time Report" or as a separate claim filed with his local supervisor.

Rule 27 of the current Agreement between the Parties provides:

"Rule 27:

TIME LIMIT ON TIME CLAIMS AND CLAIM APPEALS

Claims for compensation must be made by the employes within thirty (30) days of date on which service is performed.

When time is claimed in writing and not allowed, the employe will be notified in writing at once and objections stated.

All appeals from decisions as to the application of any of the rules of this Agreement must be made by the Employee or Employees concerned, within thirty (30) days from date of last decision. All further appeals must be filed within thirty (30) days from the last decision."

Claims for compensation, then, in order to be valid under the Agreement, **must be made by the employe** concerned. The General Chairman is not empowered, under the provisions of the controlling Agreement, to "claim time" for any employe.

The General Chairman of the Telegraphers on this property takes the position—one in which he is supported by his Organization—that despite the clear, specific language of Rule 27, as agreed to by the Parties, he has the right to file a claim for compensation in behalf of any employe.

He takes the further position, that, despite the clear, specific language of Rule 19, as agreed to by the Parties, he has the right to appeal a "case" direct to the highest officer designated by the Management to handle such cases—in other words, the rule does not compel him to take the matter up with officer of department in local charge, and if not able to settle, to appeal within thirty (30) days in proper succession to and including the highest officer designated by the Management to handle such cases.

The Carrier takes the position that the language of Rules 27 and 19 is very clear—no ambiguity—and the Parties having agreed, in negotiations, to such language, must, while the rules are in effect, comply with same.

The Carrier respectfully submits this claim is not properly before your Board and should be dismissed for the following reasons:

1. The employe involved is barred by laches—the thirty-day period prescribed in Rule 27 having expired without claim having been made by Mr. Dunn.
2. The Telegraphers' Organization is not empowered, under the rules, to "claim time" for individual employes.
3. The Telegraphers' Organization is estopped from progressing a "grievance" where none exists.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. The claimant, a Telegrapher, was assigned the 3:00 to 11:00 P.M. shift at Tower "B", Waterville, Maine, where continuous service is maintained. Because of illness of the third trick employe, claimant was requested to

work four hours beyond his shift. This service was completed at 3:00 A. M., December 11, 1949. When the claimant filed his time, he made claim for the full period, but did not claim thirty minutes' meal time provided for in Rule 4 of the schedule. On January 10, 1950, the General Chairman of the Petitioner made a claim on behalf of claimant to the Assistant General Manager. This was denied by the Carrier for the reason it was not filed in accordance with Rule 27 of the schedule. Rule 27 reads as follows:

"Claims for compensation must be made by the employees within thirty (30) days of date on which service is performed.

When time is claimed in writing and not allowed, the employee will be notified in writing at once and objections stated.

All appeals from decisions as to the application of any of the rules of this Agreement must be made by the Employee or Employees concerned, within thirty (30) days from date of last decision. All further appeals must be filed within thirty (30) days from the last decision."

The specific contention made by the Carrier is that when the claim was filed by a representative of the claimant, it did not comply with the foregoing rules. The parties have, by their submissions, agreed that the real issue is: Has the General Chairman the right to make a claim on behalf of an employee? Both parties agree that Rule 27 of the current Agreement is controlling.

It should be noted that Rule 19 of the Agreement authorizes the Committee representing employees to take up with appropriate officers of the Carrier on behalf of employees' grievances arising between employees and Management. The word "grievances" is a generic term applied to all manner of disputes between employees and Management. Included within its meaning are disputes involving the right of employees to specific pay allowances under the Agreement. The right of the claimant here, Mr. C. E. Dunn, to the pay allowance is a dispute which is included in the general term "grievances".

Rule 27 provides that claims for compensation shall be made by the employees. There is nothing in this rule which would indicate that there was anything peculiar about the act of making a claim that would require such act to be made in person and personally by the affected employee. The rule contemplates that the claim will be made in writing, but the rule is not concerned primarily with the manual or physical act of making a claim. The subject of the rule is time limitation on making claims. As a general proposition, what one may do himself, he may do through another. This principle is recognized by Rule 19. We find nothing in Rule 27 which would forbid the application of this principle here. Of course, where one acts through an agent, attorney, or representative, the act of such agent is the act of his principal. There is nothing in the submissions that would indicate that the General Chairman was not the duly constituted representative of the claimant. So, when the General Chairman filed a claim for and on behalf of C. E. Dunn, an employee of the Carrier, such act was the act of the employee for the purposes of Rule 27.

The Carrier also contends that the claim was filed after the time limited by the rule. The claim arose on December 11 and was filed on January 10, which was the thirtieth day. We find, therefore, that the claim was filed within the time allowed by the rule.

We conclude, therefore, that there was no violation of the scheduled rules when the General Chairman filed on behalf of the claimant a claim for compensation. It is not disputed that the claim, on its merits, is supported by the rules.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Carrier violated the Agreement when it refused to recognize the claim of C. E. Dunn, filed on his behalf by the General Chairman, and failed to pay the claim.

AWARD

Claim (a) sustained.

Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.