Award No. 7845
Docket No. SG-8416

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America, on the Pennsylvania Railroad:

(A) Claim that the Carrier violated and continues to violate Article 8, Section 8 of the current agreement when it fails to provide proper motor cars on territories where motor cars are used.

(B) Claim that all T & S Employes effected by the above violation be paid in addition to their regular time made two hours and forty minutes at time and one half rate for each day starting ninety days prior to the date of this claim and continuing to the date that proper motor cars are provided.

(C) Claim made in behalf of the following T & S employes as they may be effected by the above.

F. A. Hodson	R. H. Lewis	H. M. Roland	G. A. Black
W. J. Quick	C. N. Hudson	R. C. Kirchner	J. R. Donovan
R. T. Tarvin	H. L. Rickels	A. R. Morgan	M. E. Newcomer
W. G. Reuther	J. R. Helmick	E. E. Maham	H. M. Newcomer
J. S. Smith	W. Abner	J. T. Wallace	A. D. Poe
J. H. Dobbins	W. E. Bergen	F. L. Bath	Wm. Bath
S. Briggs	L. J. Kerns		

EMPLOYES' STATEMENT OF FACTS: Under date of September 1, 1951, Local Chairman L. J. Kerns presented the claim to Supervisor Telegraph and Signals, L. W. Hayhurst, as follows:

"I am presenting to the following claim in behalf of the following T & S Employes who are listed in part (c) of this claim:

(A). Claim that the Carrier violated and continues to violate Article 8, Section 8 of the current agreement when it fails to provide proper motor cars on territories where motor cars are used.

(B). Claim that all T & S Employes effected by the above violation be paid in addition to their regular time

CONCLUSION

The Carrier has shown that under the applicable Agreement, the Claimants are not entitled to the additional compensation which they claim by reason of the alleged violation of Article 8, Section 8 of the Agreement.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employes involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: It is agreed by the parties that the question at issue in Docket SG-8416, 8417 and 8418 turns on whether the claims involved in each case are before us under Article 2, Section 21 (f) of the applicable Agreement, as alleged by the Organization.

Article 2, Section 21 (f) reads as follows:

> "(f) (Effective June 1, 1950) When a claim for money alleged to be due has been presented in accordance with the foregoing paragraph (e), and is not allowed, the employe presenting the claim and the Local Chairman (when the claim is presented by the Local Chairman) shall be notified to this effect, in writing, within thirty (30) days from the date the claim was discussed with the Superintendent. When the employe or the Local Chairman (when the claim is presented by the Local Chairman) **is not so notified, the claim shall be allowed.**" (Emphasis added.)

The claims filed in Dockets SG-8416, 8417 and 8418, by the "General Committee, Brotherhood of Railroad Signalmen of America, on the Pennsylvania Railroad" are in behalf of 26 named claimants (identical in all three cases) for alleged violations by Carrier of Article 8, Section 8 of the applicable Agreement. The only respect in which these three cases differ is that each charges a separate violation of Article 8, Section 8.

SG-8416 charges Carrier failed "to provide proper motor cars"; SG-8417 charges Carrier failed "to install and maintain adequate set-offs and runways for motor cars"; and SG-8418 charges Carrier "failed to provide proper headquarters for the T & S Employes" at 12 named locations.

The Organization claims, in each of the three cases, "that all T & S employes effected (by the violation cited in each instance) be paid in addition to their regular time made two hours and forty minutes at time and one half rate for each day starting ninety days prior to the date of this claim" and continuing until the particular violation charged in each case is corrected.

The claim made in each of the three dockets before us was properly filed with Carrier on September 1, 1951.

Carrier, under date of September 14, 1951, by separate letters to the Organization, denied the claims made.

On September 25, 1951, the Organization arranged to discuss with Carrier claims of the three cases at a meeting held October 3, 1951.

Carrier's Superintendent, by letter to the Organization dated January 3, 1952, denied the claims as made.

It is the position of the Organization that the claims in Dockets SG-8416, 8417 and 8418, requesting on behalf of the named claimants "as they

may be effected" payment "in addition to their regular time made two hours and forty minutes at time and one half rate for each day starting ninety days prior to the date of this claim" and continuing to the date the alleged violation was corrected, are claims "for money alleged to be due"; and Carrier's final denial, made January 3, 1952, having come more than thirty days from the date (October 3, 1951) the claims were discussed with the Superintendent, therefore (by reason of Article 2, Section 21 (f)) "the claims shall be allowed."

Despite the fact that Carrier, by letter dated January 28, 1952 to the Local Chairman, denied the Organization's claim that Article 2, Section 21 (f) was applicable, the Organization offered in evidence letter dated June 12, 1952 from Carrier's Superintendent to the Local Chairman advising the Organization that "we are arranging, as instructed by the General Manager's office, to pay your claims * * *," an acknowledgment, the Organization avers, that Article 2, Section 21 (f) is applicable. The Organization turned down this offer because Carrier's suggestion would have provided payment from 90 days before claim was filed (September 1, 1951) until Carrier's denial of January 3, 1952, whereas the Organization insisted on payment to continue until the date the alleged violations were corrected.

It is argued on behalf of the Organization that "it is entirely reasonable to assume that if the Local Chairman had accepted the Carrier's compromising offer of June 12, 1952, there would have been no question raised by Carrier concerning the applicability of Article 2, Section 21 (f)."

The Organization cites numerous Awards of this Board, involving Carrier here concerned, in which, it is averred by the Organization, Carrier chose to use Article 2, Section 21 (f) or identical contract provisions, in its own defense in similar cases; and instances where the same Carrier argued, as it does here, that Article 7, Section 2 was applicable in similar claims, only to be reversed by Awards of this Board.

The record reveals that the Organization raised the question of Article 2, Section 21 (f) in a letter to Carrier dated January 21, 1952, and Carrier, by letter dated January 28, 1952, stated it did not "consider that the claims made * * * are payable under Article 2, Section 21 (f) * * *."

With respect to Carrier's subsequent (June 12, 1952) offer to pay the claims as hereinbefore outlined, the Organization rejected the offer and it is not here before us.

The only issue before us, then, is the question of Article 2, Section 21 (f). We have studied the Awards cited by the parties in support of their respective positions.

A reading of Section 21 (f) would lead one to the conviction that it is here applicable, but 21 (f) cannot be lifted out of context. It must be studied with relation to the paragraphs which precede it.

For example, paragraph (f), by its language, is predicated on the preceding paragraph (e):

> "When a claim * * * has been presented in accordance with the foregoing paragraph (e) * * *."

And paragraph (e) refers to paragraph (c).

The very language of Section 21, taken as a whole, would lead one to the conclusion that it covers "claims for money alleged to be due" from an error on Carrier's part in compensating an employe for work or services performed, for work or sevices such employe might have been entitled to peform, or for any other monetary provisions of the Agreement.

This is borne out by the language of the initial paragraph (a) when it says that such claims "must be presented * * * within ninety days from the date the employe received his **pay check** for the **pay period** involved." (Emphasis added.)

If an employe performed work or services, and was not properly compensated by Carrier, such an employe might not be aware of such error until he received his pay check for the period involved. We can also conceive of the possibility of an employe feeling he was entitled to perform certain work or services, erroneously performed by others while he was on or off duty. Paragraphs 1 and 2 of initial paragraph (a) would protect his rights to make a claim when he returns to duty.

An analysis of the Awards cited by the Organization in support of its position here discloses that thirteen of such cited Awards involved claims for payment of services or work performed by claimants, or for work which claimants believed they had a right to perform, under the applicable Agreement.

Three of the cited Awards involved claims because the Organization averred Carrier—the same Carrier here involved—had violated Article 8, Section 10 of the Agreement.

In one of these Award 5186 (Boyd), this Board said:

> "The chief complaint of the Petitioner is that certain unnamed employes were required to carry water to their headquarters, and that such service was performed **prior to going on duty** on their regular assignment." (Emphasis added.)

Two of them, Award 5219 (Wenke) and Award 5284 (Wyckoff), involved a charge Carrier failed to provide claimants with headquarters, and as a consequence, claimants were required to carry tools, materials and clothing in their own automobiles to and from their homes; in other words, to work outside their regular hours, as in Award 5186.

In view of the foregoing, we must and do conclude that the Organization's claims, as outlined in SG-8416, 8417 and 8418, are not, as the Organization argues, claims "for money alleged to be due" under Article 2, Section 21 of the applicable Agreement.

Therefore, the Organization having stated "this claim should be sustained under the provisions of Article 2, Section 21 (f)" because "there can be no question that the Carrier violated the provisions of Article 2, Section 21 (f)", a denial of the claim is in order.

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

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

That the Agreement has not been violated.

AWARD

Claims (A), (B) and (C) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1957.