

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the August 21, 1954 Agreement at Muskogee, Oklahoma, when,

(a) After having received claim of Mr. P. H. Sudderth, Yard Clerk, on March 14, 1955, for 5 days at punitive rate of his position, and having failed to notify Mr. Sudderth within 60 days that the claim was disallowed and the reason for disallowance, it failed and refused to compensate Mr. Sudderth for the time as claimed, and,

(b) That Carrier shall now be required to compensate Mr. Sudderth for five days at the punitive rate of his position on account of this violation.

EMPLOYEES' STATEMENT OF FACTS: On March 14, 1955 Mr. Sudderth, Yard Clerk, Muskogee Yard, filed time claim in writing with General Yardmaster, Mr. G. T. Love, for 5 days pay at punitive rate account of Switchman W. B. Greber used to protect vacation of Yard Clerk Richmond.

To and including May 30, 1955 Mr. Sudderth has not received reply to his claim from the Carrier in any form.

POSITION OF EMPLOYEES: The material facts in this case are not in dispute and involve the failure and refusal of the Carrier to pay a claim to which they had made no reply prior to the expiration of 60 days.

There is in evidence an agreement between the parties bearing effective date August 21, 1954 in which the following Article appears and which the Employees cite as being in violation:

Article V, Section (a), of the Agreement provides:

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

It is our position that in view of the facts of record the time limit rule was not violated and therefore the claim should be denied.

Since this is an ex parte case, this submission has been prepared without seeing the employees' statement of facts or their contention as filed with the Board, and the carrier reserves the right to make a further statement when it is informed of the contention of the petitioner, and requests an opportunity to answer in writing any allegation not answered by this submission.

All data submitted herewith in support of the carrier's position has been presented to the employees or their duly authorized representative and is hereby made a part of the matter in dispute.

OPINION OF BOARD: The material facts in this case do not appear to be in dispute. On March 14, 1955, Claimant, Yard Clerk at Carrier's Muskegon Yard, filed a timely written claim for five days punitive pay with General Yardmaster Love, Carrier's Vice President and General Manager Carpenter, the officer designated to consider the merits of such claims, although advised of said claim by telephone call from the General Yardmaster, did not receive written notification thereof and did not make a decision on the merits of claim within 60 days of date of filing. On May 30, 1955, the General Chairman requested payment of claim under Article V, Section 1 (a) of the August 21, 1954 National Agreement, Carrier declined.

Did Carrier violate said Paragraph of said Agreement under the facts above summarized? To answer this question it is necessary not only to consider the sentence therein which says that if the person who filed the claim is not notified of its disallowance within 60 days of filing date, the claim shall be allowed as presented. It is necessary also to (1) consider portions of the Paragraph; (2) try, if possible, to give force and effect to all portions of the Paragraph; and (3) in so doing, consider the basic intent of the Parties when they wrote the language of the Paragraph.

When the Parties wrote Article V, Section 1 (a), they clearly intended to outlaw both stale claims and stale disallowances of claims. Henceforth, there was to be both timely filing of claims (within 60 days of occurrence) and timely decisions thereon (on declined claims, within 60 days of date of filing.) Once a claim was timely filed by an employee, the employing railroad was to have 60 days within which to investigate the claim, hold the usual conferences thereon with employees' representatives, make a decision, and if the decision was to disallow, notify in writing with reasons, the filing claimant (see second sentence of the Paragraph.)

In the instant case there was timely filing of claim but no timely disallowance. The defending argument is that (1) the original written claim got lost; (2) there was no investigation of and no conference on the merits of said claim; (3) there was actually no disallowance of said claim and the claimant could not have been notified of reasons therefor, as required in the second sentence of the above-mentioned Paragraph; and (4) to rule the Carrier in violation of said Paragraph would be to deprive it of substantive rights vouchsafed under the Railway Labor Act, as amended.

We cannot agree with this argument. Article V, Section 1 (a), specifies correlative rights and duties of employees (or their representatives) and of carriers. A carrier's specified duty is to give timely notice of a disallowed claim, with reasons for disallowance. Otherwise the claim must be allowed

as presented. Inherent and necessary for the proper performance of this specified obligation are certain other, unspecified obligations. Among these are (1) the duty to keep the channels of communication within management open and free; (2) the duty to investigate claims promptly; (3) the duty to confer on claims promptly with representatives of claimants; and (4) the duty to make prompt decisions of allowance or disallowance. It is argued that some or all of these items are rights of a carrier under the Railway Labor Act. This may well be true. But they are also duties of a carrier under the second sentence of Article V, Section 1 (a) of the August 21, 1954 Agreement. They are duties which inhere in said sentence; and if said duties are not fulfilled, the carrier suffers a penalty. To so rule is not to rewrite or add to the Parties' Agreement.

In respect to the loss of a written, timely filed claim in the mails or otherwise, it must be clear that a Carrier could defeat the purpose of Article V, Section 1 (a) if it failed wittingly or unwittingly to see that the claim was passed up to the decision-making official through proper channels. If the position of the Carrier in the instant case were to prevail, it would be possible to disallow a claim by losing it rather than by passing on its merits. If the claim were re-filed after being lost, it would be possible to allege that said re-filing was not timely.

It should be clearly understood that in the instant case there are no facts of record which suggest that the Carrier was guilty of bad faith in letting the written claim get lost. But there was, in effect, a technical disallowance of said claim. This Board should not be placed in the position of having to determine whether in one case a claim was purposely lost and in another case not so lost. To deny the instant claim would be to put the Board in such position. It must be sustained as presented, in accordance with the meaning and intent of all the provisions of Article V, Section 1 (a) of the August 21, 1954 Agreement.

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 Employees 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

That the Carrier violated the National Agreement of August 21, 1954.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July, 1958.