

Award No. 9039  
Docket No. SG-8881

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Francis B. Murphy, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

(a) Carrier violated the Signalmen's Agreement when it abolished positions of one Signalman, one Assistant Signalman, and two Helpers in Gang S-14 under Bulletin No. 7 at the close of work, 4:00 P. M., Friday, August 19, 1955.

(b) That the above positions be re-established. [Carrier's File G-374-2; G-374.]

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is presented to this Board for determination solely on the issue as to the Carrier's compliance with Rule 54(b) of the October 1, 1950 Signalmen's Agreement.

Rule 54(b) reads:

"Decisions on claims shall be rendered, in writing, by subordinate officers **stating the reason for non-allowance**, within thirty (30) days from the date such claim is served, or within thirty (30) days from conclusion of conference if one is held thereon. If a decision is not rendered within this time limit, the claim shall be allowed." (Emphasis supplied.)

The protest and claim covering the improper abolishment of the positions was initially presented to the Carrier in the following letter:

"Brotherhood of Railroad Signalmen of America

Local Lodge 176 Cincinnati Division

August 15, 1955

Falmouth, Ky.

Mr. Frank Hacker  
Signal Supervisor  
Latonia, Ky.

Dear Sir:

Please refer to bulletin No. 70 dated August 11, 1955, from the Signal Supervisor's office at Latonia, Ky., in which it is stated that

Gang 14 would be cut off at the close of their work week August 19th, as required by the terms of rule previously quoted.

Claim as presented by the organization clearly states **"carrier violated the signalmen's agreement when it abolished positions" etc.** (Emphasis by carrier.)

Carrier states positively that no rule of the signalmen's agreement was violated and submits that the claim should be denied.

**OPINION OF BOARD:** Claim is presented that the Carrier violated the Signalmen's Agreement when it abolished positions in Gang S-14 under Bulletin No. 70 at the close of work, 4:00 P. M., Friday, August 19, 1955.

The Organization's statement of facts presents this case to us "solely on the issue as to the Carrier's compliance with Rule 54 (b) of the October 1, 1950 Signalmen's Agreement" which reads:

"Decisions on claims shall be rendered in writing, by subordinate officers stating the reason for non-allowance, within thirty (30) days from the date such claim is served, or within thirty (30) days from conclusion of conference if one is held thereon. If a decision is not rendered within this time limit, the Claim shall be allowed."

On August 15, 1955, the local Chairman of the Organization notified Mr. Frank Hacker, Signal Supervisor for the Carrier, as follows:

"Mr. Frank Hacker  
Signal Supervisor  
Latonia, Ky.

Dear Sir:

"Please refer to bulletin No. 70 dated August 11, 1955, from the Signal Supervisor's office at Latonia, Ky., in which it is stated that effective with the close of work Friday, August 19th, 1953, the following positions will be abolished in Signal Gang S-14. 1 Signalman, 1 Asst. Signalman, and 2 Signal Helpers.

"Also please refer to Item 5, paragraphs A, B, and C, of the May 9, 1955 agreement, between the management and the employees represented by the various organizations.

"These paragraphs specifically infer that positions established after the recent strike would be continued. It is the intent of this agreement that these positions would be continued.

"This Local Committee believes that this is a retaliatory measure and therefore vigorously protest the abolishment of the positions mentioned in bulletin No. 70, and since it is a violation of the meaning and intent of the May 9, 1955 agreement we ask that these positions affected by this bulletin, be reestablished.

"When you have reviewed this claim please notify me if it will be allowed.

"Thanking you kindly, I remain,

Yours truly,

/s/ J. T. Bass  
J. T. Bass, Local Chairman"

Mr. Hacker replied on August 22, 1955:

"Mr. J. T. Bass  
Local Chairman, BRSoFA  
509 Pendleton Street  
Falmouth, Ky.

Dear Sir:

"In reply to your letter of August 15, 1955, reference to your claim that positions abolished by Bulletin No. 70 be reestablished.

"This will advise you that your claim will not be allowed."

Again on September 1, 1955 and September 12, 1955 letters were exchanged protesting the abolishment of these positions and a further decline by the Carrier.

From the record a denial of the claim as submitted by the Organization in its submission:

"Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company:

"(a) Carrier violated the Signalmen's Agreement when it abolished positions of one Signalman, one Assistant Signalman, and two Helpers in Gang S-14 under Bulletin No. 70 at the close of work, 4:00 P. M., Friday, August 19, 1955.

"(b) The above positions be reestablished. [Carrier's file G-374-2; G-374.]"

is in order.

One of the reasons for denial of this claim is that the Organization now has received that which it asks in its claim before this Board.

Then the contention that Rule 54 (b) was violated on the property by the Carrier is an afterthought and was not included in the original claim. We do agree that the action of the Signal Supervisor in its letters in reply to the Organization asserting its claim was in violation of Rule 54 (b) in that they did not give any reasons. However, if the failure to state the reason for abolishment of the positions not being stated in letter of denial of the claim is a failure to render a proper decision under Rule 54 (b) such a claim was not made or processed on the property.

**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 there was no violation of the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.

#### DISSENT TO AWARD 9039, DOCKET SG-8881

The majority was aware that the issue presented in this case was Carrier's *non-compliance with Rule 54(b)*, in that the subordinate officer with whom the claim was initially filed did not state a reason for its non-allowance. Rule 54(b) reads as follows:

"(b) Decisions on claims shall be rendered, in writing, by subordinate officers stating the reason for non-allowance, within thirty (30) days from the date such claim is served, or within thirty (30) days from conclusion of conference if one is held thereon. If a decision is not rendered within this time limit, the claim shall be allowed."

The majority was aware from the record that on the thirty-sixth day following the initial filing of the claim Carrier was informed that it was in violation of Rule 54(b) and that the claim must now be allowed under the rule. The record disclosed that Carrier made no attempt to answer this contention but sought to deal with the matter on its merit. Despite these disclosures in the record the majority saw fit to hold that Petitioner's contention with respect to non-compliance with 54(b) was an afterthought and was not included in the original claim. The record is sufficient to take care of the majority's "afterthought" proposition but their "not included in the original claim" proposition is novel indeed and leaves much to be desired in the matter of preserving orderly procedure on the property. Presumably, the Employees must now, in the initial drafting of claims, assume that the Carrier will violate the negotiated rules of procedure and frame their claims accordingly, otherwise the Carrier's end of the bargain is meaningless. The situation created by the majority is critical especially when it is understood that the issue was not raised by the Carrier, but was injected by a Carrier Member of the Division during the course of handling before a referee who unfortunately permitted the plea to prevail. The action of the majority has all the earmarks of a studied effort to obstruct rather than promote interpretation and application of agreement rules as contemplated by the Railway Labor Act.

The majority agrees that the Signal Supervisor's failure to state a reason for denying the claim was in violation of Rule 54(b), but then goes on to state:

"\* \* \* However, if the failure to state the reason for the abolishment of the position not being stated in the letter of denial of the claim is a failure to render a proper decision under Rule 54(b) such a claim was not made or processed on the property."

which is just so much double talk and also indicates that the majority either did not read the record or was not being completely honest in its conclusion.

The conclusion of the majority does not carry out the intent of the Railway Labor Act and I, therefore, dissent.

/s/ G. Orndorff