

Award No. 10368
Docket No. MW-9325

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The claim presented on July 31, 1954 account of the work of constructing two 18-foot diameter steel protective cells in the vicinity of Bridge 728 being assigned to outside forces should be allowed as presented, account of said claim not being disallowed within 60 days after January 1, 1955 as is required by Article V of the August 21, 1954 Agreement;

(2) Because of the violation referred to in part (1) of this claim, the Carrier be required and directed to allow the following claim which was filed on July 31, 1954;

"All bridge and building employes who are entitled and/or permitted under agreement rules to perform bridge and building work on the territory here involved be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the contractor forces during the time they were employed in the work referred to in part (1) of this claim."

EMPLOYES' STATEMENT OF FACTS: The facts herein involved may best be presented by a quotation of the following correspondence passing between the parties,

"April 19, 1954

Mr. D. L. Woods
General Chairman, B. of M. of W. E.
450 Buchanan Street
Gary, Indiana

Subject: Bridge No. 728

Dear Sir:

In accordance with our practice of advising you of this company's

a claim which might be considered to be adequate and in appropriate form, that claim never was progressed to this Board, and in the handling of this case on the property, the highest officer designated to handle time claims and grievances gave a decision of declination in a letter dated January 9, 1956, in response to a letter dated November 15, 1955, addressed to him by the General Chairman of the Organization, which purported to appeal the original claim to his office in the following language:

" . . . And inasmuch as Mr. S. H. Shepley, in a letter dated October 13, 1955, advised that our claim would not be allowed, we have no other choice than to request that you now allow payment of our claim referred to above and identified as Case BG-21 under the provision of the August 21, 1954, Agreement Article V--Carriers proposal No. 7 . . . "

The Organization by its letter of November 15, 1955, sought payment of the original claim, which it identified as Case BG-21, upon appeal to the office of the highest officer of the Carrier designated to handle time claims and grievances. That appeal was declined as of January 9, 1956, although the Carrier still did not acknowledge that the original claim as presented was proper or adequate. The claim so declined was not progressed to the National Railroad Adjustment Board, or any other board or tribunal, as required by Section 1(c) of the Time Limits on Claim Rule, within nine months from the date of the decision of declination, nor was any extension of this period requested or granted and, accordingly, the original claim in this case is barred under the Time Limits on Claim Rule. The Carrier submits that the Board should so rule.

All material data in this case have been presented to the Organization either in conference or in correspondence.

OPINION OF BOARD: Petitioner seeks allowance of this claim by reason of the provisions of Article V of the August 21, 1954 National Agreement (Time Limit on Claims).

Organization contends that Carrier failed to take appropriate action on their claim dated July 31, 1954 within the time prescribed by Sections 1(a) and 2 of Article V.

Carrier responded to Organization's letter on August 4, 1954 as follows:

"Dear Sir:

"I am returning, attached hereto, your letter of July 31, 1954, claiming that the Carrier violated the agreement when the construction of two 18' diameter steel sheet piling protective cells at Bridge No. 728, Indiana Harbor Ship Canal, was performed by forces outside those represented by your organization.

"In accordance with instructions issued by the office of the Chief Engineer and as outlined in the next to the last paragraph of the Chief Engineer's letter of June 28th to you relative to the inauguration of a new system of identifying and establishing case numbers for time claims and grievances, it is necessary that when a time claim or grievance is filed with me that it contain the date on which the incident occurred of which complaint is made.

"Inasmuch as your letter of July 31st does not comply with this

request, I find it necessary to return the letter to you, however, I shall be glad to consider the claim you have outlined on its merits, upon receipt of the required information."

On August 16, 1954 Organization wrote the Carrier. The letter read in part:

"I am returning the claim for your consideration. However, if you fail to act thereon in a reasonable length of time I shall consider you have denied the claim and then act accordingly."

Correspondence continued between the parties through the months of October, November, December, 1954 and January, 1955. Organization continually kept returning the July 31 letter and requested a decision. Carrier kept asking for the information (the date of the incident) requested in its letter of August 4. It indicated a willingness to make available to the Organization those of its records which were necessary to the compilation of such data.

Notwithstanding its letter of August 16, 1954, the Organization on April 15, 1955 filed the present action alleging that its claim had not been disallowed by the Carrier. It alleged a violation of Article V and requested payment of the claim in full as presented.

Section 2 of Article V requires that claims or grievances filed prior to the effective date of rule must be ruled on or appealed within 60 days after the effective date of the rule.

We are of the opinion that analysis of the correspondence in the case leads only to the conclusion that a ruling under the provisions of Section 2 was made by the Carrier on August 4. There is no exact words or language which must be used. Carrier did all that was required by the rule. Organization was required to appeal within 60 days after the effective date (January 1, 1955) of the rule. This the Organization failed to do.

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

Carrier did not violate 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 21st day of February, 1962.