

Award No. 10644
Docket No. CL-9497

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

SACRAMENTO NORTHERN RAILWAY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier has violated and continues to violate the rules of the Clerks' Agreement through its unilateral action in abolishing the position of Revising, Interchange, Demurrage and Expense Clerk at Pittsburg, California, effective 8:00 A. M., July 25, 1955, and thereafter permitting and/or requiring the Agent at Pittsburg to perform work previously performed by the occupant of the abolished position, and

(b) The clerical work here involved including the signing of bills of lading at Pittsburg, California be returned to employees within the scope and operation of the Clerks' Agreement, and

(c) Mrs. Helen H. Tennant be additionally compensated for eight hours at the rate of Revising, Interchange, Demurrage and Expense Clerk for each day of the violation, July 25, through August 5, 1955, inclusive, and

(d) Mr. C. H. Hensley be additionally compensated for eight hours pay for each day of the violation, beginning August 15, 1955, and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 25, 1955, the force at the Pittsburg, California Freight Station consisted of the following:

Position	Hours of Assignment
Cashier, Rate, Bill, Train Desk and Yark Clerk	6:30 A. M. to 3:30 P. M.—with hour meal period.
Revising, Interchange, Demurrage and Expense Clerk	8:00 A. M. to 5:00 P. M.—with hour meal period.
Agent	7:00 A. M. to 4:00 P. M.—with hour meal period.

Organization's theory in this case, if adopted, would preclude a supervisor from signing his own letters!

Without prejudice to its position on the merits, which has been set forth above, Carrier desires to point out that there is no merit to the portion of the instant claim which demands penalty payments prior to August 22, 1955. This date represents the earliest date for which any employee was entitled to receive penalty payments because of the Superintendent's failure to comply with the Time Limit Rule inasmuch as it is the beginning of the 60 day period prior to the date (October 21, 1955) the General Chairman filed the new claim with the Superintendent. The General Chairman's letter of October 21, 1955 must be considered a new claim for either or both of two reasons: (1) the letter of October 21, 1955 demanded penalty payments of eight hours pay per day; the timeslips filed by the employees beginning July 25, 1955 demanded only a two hour call; (2) the letter of October 21, 1955 was not framed in the form of appeal from the rejection of the timeslips filed by the employees, but rather it was framed as a new claim and thus it could not have retroactive effect more than 60 days prior to October 21, 1955. Furthermore, in part (d) of the instant claim the Organization claims penalty payments on behalf of Mr. C. H. Hensley in the amount of eight hours pay for each day ". . . beginning August 15, 1955, and continuing until the violation is corrected." As set forth in Carrier's Statement of Facts Mr. Hensley has already been paid \$1,383.69 which covers payment of eight hours pay for each work day beginning August 22, 1955 and continuing through January 4, 1956, such payment having been made account the failure of the Superintendent to comply with the Time Limit Rule. In no circumstances could claimant be entitled to any additional penalty payment for this period.

In conclusion, Carrier emphatically asserts that the instant claim is wholly without merit and urges your Board to deny it in its entirety.

All of the above has been presented to the Employees.

OPINION OF BOARD: The substantive aspect of this claim is based on the contention that the Carrier improperly removed work from the Clerks' Agreement because, following the abolishment of the Revising, Interchange, Demurrage and Expense Clerk position at the Pittsburg, California freight station effective July 25, 1955, the Agent at that location began signing his own name to bills of lading. The incumbent of the subject clerical position had formerly signed the Agent's name to such documents, this work normally being performed between 4:00 P. M. and 5:00 P. M. each day.

This controversy originated on the property in the form of individual time claims for a two hour call each day, but in making appeal from the Time-keeper's adverse decision on these claims the Organization's General Chairman expanded the remedy sought by requesting eight hours pay for each day of claimed violation, from July 25 through August 5, 1955 for Mrs. Helen H. Tennant, and for the period beginning August 15, 1955, until the claimed violation is corrected, for Mr. C. H. Hensley. In addition to urging the merits of the revised claim before this Board, the Organization contends the claim should be allowed retroactively and prospectively, until the alleged violation is corrected, because Carrier Superintendent H. J. Mulford's denial decision was made more than 60 days after said claim had been appealed to him. These parties are signatory to the August 21, 1954 Agreement, Article V of which sets forth time limits on the handling of claims.

During subsequent handling on the property the Carrier granted the claim to the extent of eight hours pay for Claimant Hensley for the period beginning

August 22, 1955 (which is 60 days prior to the General Chairman's appeal of October 21, 1955) through January 5, 1956 (date of the Superintendent's adverse decision). The Carrier refused to grant compensation prior to August 22, 1955 and contended that its denial on the merits of the claim on January 5, 1956 properly disposed of the matter after that date.

Since the claim was expanded from two hours pay per day as of the time the General Chairman revised the claim on October 21, 1955, we do not think the Carrier's failure to make timely denial of this revised claim required that it be allowed for eight hours per day retroactive to July 25, 1955, when the time claims for a two hour call each day began to be filed. We do think the "two hour call" time claims are included in the expanded claim, however, and for this reason we conclude the Carrier became obligated to grant these two hour call claims for the period beginning July 25, 1955 through August 5, 1955 for Mrs. Tennant, and for the period beginning August 15, 1955 until, but not including, August 22, 1955 for Mr. Hensley.

With respect to the period subsequent to January 5, 1956, we think the Carrier restricted its liability, due to procedural failure, by its denial decision to the General Chairman on that date. The language of the claim "and continuing until the violation is corrected" is terminology commonly used in claims of a continuing nature to avoid any possible contention that such claims are limited to a specific date or period, and to obviate the necessity of filing additional claims for each day involved. A party's failure to make a timely denial of a continuing claim, or to make a timely appeal from a denial of such a claim, does not mean that the substantive nature of the continuing claim therefore must be granted or denied for the unlimited future, however, regardless of the merits of the claim. To hold otherwise would lead to absurd results—such as work properly belonging to a given craft being indefinitely lost to it because of failure to take timely action on an appeal, or a Carrier being required for the indefinite future to pay employees for work to which they are not contractually entitled and which is properly being performed by others. The purpose of the Time Limit Rule is to provide for the expeditious handling of claims, not to fasten upon the parties a system wherein a single lapse can produce continuing or repeated injustices thereafter.

We hold, therefore, that the confronting claim may be upheld for the period after January 5, 1956 only if the merits of the claim so dictate. We find no merit in the claim. The Agent may delegate to a Clerk, as he had previously done, the authority to sign his name on bills of lading, but this delegation of authority is revocable at will when the Agent desires to sign his own name on such documents.

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 Agreement in part.

AWARD

Claim sustained in part and denied in part as stated in above Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1962.