

Award No. 11986
Docket No. TE-10426

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GEORGIA RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Georgia Railroad, that:

1. Certain work being performed by the first trick telegrapher in "G" Office, Atlanta, was transferred to the clerical forces in the office of the Joint General Superintendent of the Georgia Railroad and the A&WP-WofA Railways, and,
2. This work shall be restored to the employes of the Georgia Railroad in "G" Office, Atlanta, represented by The Order of Railroad Telegraphers, and,
3. Beginning December 12, 1956, T. C. Serrels, extra telegrapher, who was idle on that date, and the senior idle telegrapher who was idle on subsequent dates, shall respectively be compensated for eight (8) hours at the straight time rate for each day that this transfer of work has been in existence and until it is returned to the employes represented by The Order of Railroad Telegraphers in "G" Office, Atlanta.

EMPLOYES' STATEMENT OF FACTS: There is evidence an agreement by and between the parties to this dispute effective September 1, 1949, as amended. In addition, there is a joint Agreement between the Georgia Railroad and the employes covered by the September 1, 1949 Agreement and the A. & W.P.-W of A. Railways, dated May 17, 1920, which has for its purpose the allocation of positions in "G" Office, Atlanta. A copy of this latter agreement with attachments is attached hereto as ORT Exhibits Nos. 1 and 2.

On January 22, 1954, the General Superintendent issued Circular No. 17-54 reading:

"Subject: Daily Report of Cars Loaded and Received from Connections.

All Agents:

Carrier has shown that there was no violation of the agreement and that the practice complained of is perfectly proper under the practices prevailing on A&WP -- WofA. Carrier respectfully requests this claim be denied.

All data contained herein has been made available to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims that the Carrier violated the effective agreement when certain communications work known as the daily "Telegraphic Report of Cars," and related information which had been performed by the first shift telegrapher in "G" Office, Atlanta, Georgia, was transferred to clerical force in the office of the Joint General Superintendent of the Georgia Railroad, Atlantic and West Point Railroad and Western Railway of Alabama, three separate lines under the same management.

The Carrier denied the claim on the property on the following grounds:

1. "First, let me say that we do not recognize any claims for unnamed employees."

It was also denied on the following grounds:

2. "We find no basis for claim in this case, therefore, your claim must be declined."

It was further declined as follows:

3. "As I stated to you, we cannot entertain claims for senior idle telegraphers, as it is our position that under the time limit on claims rule in the May 20, 1955 agreement, claimants must be named. I am willing to settle the claim on basis of paying Mr. Sorrells for one day, December 12, 1956, you to withdraw balance of claim."

The above were all of the reasons given by the Carrier for denial of the claim.

At the threshold of consideration we are confronted with procedural matters that must be determined. It is the contention of Claimants that the Carrier did not give any reasons for denying the claim on the property as required by Article V of the August 21, 1954 Agreement, within the time therein provided. On the other hand, Carrier contends the same agreement was violated because the Claimants were not named or identified.

We will first consider the contention of Carrier that the Claimant is not identified or named. Carrier's contention could not apply to T. C. Serrels as telegrapher. He was named.

The "Senior idle telegrapher who was idle on subsequent dates," does identify a specific employee. Award 10801 -- Kramer.

It has been held many times that where the identity of Claimant, though not specifically named, is readily ascertainable by the Carrier, it is not necessary that he be named in the claim. See Awards 10533 -- Mitchell; 10576 -- LaBelle.

The agreement provides when a claim is disallowed, the Carrier shall, within 60 days from date same is filed, notify whoever filed the claim, in writing of the reasons for such disallowance. The purpose of the provision was to require sufficient reason to be given so that the claim could be matured and fully developed by debating the issues on the property and the parties themselves could resolve the dispute there.

New or different reasons from those presented on the property are therefore not available before this Board. Award 10313 — Webster.

Two of the reasons given here concerned unnamed Claimant. Those were definite reasons and if correct as a matter of procedure would end the matter. We have held those reasons though definite and certain should not be sustained.

If no other reasons were given that would dispose of this dispute.

Was the statement:

"We find no basis for claim in this case, therefore your claim must be declined,"

a reason under the agreement?

There was no way Claimant could tell from that statement what he was required to meet. Did it mean basis in fact, basis in law, identity of claimant, or what did it mean?

We hold that it was too indefinite, uncertain and general to constitute a reason under the provisions of the agreement. Award 11471 — Moore, 10313 — Webster. The claim must therefore be sustained. The record shows the work has already been restored to "G" office as requested in part (2) of the claim.

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 Agreement was violated.

AWARD

Claim 1 sustained. Claim 2 sustained. Claim 3 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.

**CARRIER MEMBERS' DISSENT TO AWARD 11986,
DOCKET TE-10426**

This decision is **another** unfortunate example of this Referee's failure to grasp the issues presented for decision. See Carrier Members' dissents to Awards 11726, 11674, 11667, 11669, 11722, 11732, 11981, 11983, 11984 and 11987.

The errors committed by the Referee in this decision may be stated in summary form, as follows:

1. Refusal to accept Carrier's contention that the claim should have been dismissed because there were no identifiable Claimants (Award 11754), for other than December 12, 1956;
2. Improperly considering the Organization's argument involving Article V, when it was not included as part of the Statement of Claim (Award 10904);
3. Improperly concluding a reason was not given when it is admitted by the Referee, the claim was denied because of unnamed claimants. The Referee says:

"Those were definite reasons and if correct as a matter of procedure would end the matter."

The Referee's conclusion that a reason was given—but it was not given because he arrogates to himself the right to determine whether it was a valid reason is so patently ridiculous—it neither requires nor deserves a response;

4. Improperly concluding the language "We find no basis for claim in this case.", is not a reason sufficient to comply with Article V when our awards unanimously hold to the contrary. Awards 10400, 11231, 11208, 11441 and 12020.

For the reasons set forth above, we dissent.

**W. F. Euker
R. E. Black
R. A. DeRossett
G. L. Naylor
W. M. Roberts**