

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NEW YORK CENTRAL RAILROAD COMPANY
(Eastern District, Boston & Albany Division)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Boston & Albany District, that:

1. Carrier violated Telegraphers' Agreement when at 1:41 P.M., June 1, 1957, it required or permitted train service employes not covered by the Telegraphers' Agreement to perform the work of a telephoner and/or block operator in the handling of verbal train orders, lineups, transmission of arrival time of Local Extra 8266 West at Palmer, Mass., and the transmission of a train consist which was essential to the operation of the trains.

2. Carrier shall compensate the senior available extra employe who was deprived of the work he was entitled to perform on June 1, 1957, for 8 hours' pay. Employe shall be determined by a joint check of the Carrier's records.

3. In the event the joint check determines no extra employe was available on June 1, 1957, Carrier shall compensate Mr. H. H. Tupper, who was the available regular assigned employe on his rest day, and if called could have reported for extra duty within 10 minutes, for 8 hours at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: On June 1, 1957, Conductor of Extra 8266 West at Palmer, Massachusetts, used the telephone to transmit the following message to Tower Director Clarke at Tower 40, Springfield, Massachusetts:

"Local 8266 arrived at Palmer 12:53 P.M. Had into Palmer 1 load and 5 empties. Most handled 10 and 5. Will be ready to go in 15 minutes. Have 1 and 1 for Warren."

but it would be extending liberality to an unwarranted length to confound the articles "a" and "the". The most unlettered persons understand that "a" is indefinite but "the" refers to a certain object."

The Order of Railroad Telegraphers are a party to the August 21, 1954 Agreement and the new time limit rule is in effect for employes coming within the scope of the agreement between the parties to this dispute. The claimants are therefore required under Item 1 (a) of the time limit rule to be specifically identified. Claims must be on behalf of the employe(s) involved. The claim with which we are here dealing does not meet the requirements of the rules and for that reason should be dismissed.

The Fourth Division of your Board recognized this when it rendered its interpretation of this language in Award No. 1214. There, your Board held:

"The particular language subject to interpretation is: 'All claims or grievances must be presented in writing by or on behalf of the employe involved, . . .' because the question to be resolved is whether these words required the claimant to be designated by name.

* * * * *

A careful and thorough study of the awards of the various Divisions of the Board reveals that in none of the cases cited was it necessary to interpret the language of a contract similar to that of Rule 20 (a) in deciding whether the claims were properly prepared and presented. The same holds true of those awards of the First and Third Divisions cited by the Respondent herein.

The only authorities referred to where the particular question was considered and decided in the light of the applicable contractual provisions were awards of special boards of adjustment. * * *

We agree with the findings, conclusions and interpretations made by the foregoing authorities as applied to the question confronting us. We hold, therefore, that where the contract provides that claims must be presented 'by or on behalf of the employe involved', a claim filed on behalf of an unnamed individual is so lacking in specificity as to be barred by the contract.

Inasmuch as the claim presented herein fails to meet the controlling test of specificity it must be, and is, dismissed without prejudice."

(Exhibits not reproduced.)

OPINION OF BOARD: After arriving at Palmer, Massachusetts on June 1, 1957 at 12:50 P.M., Conductor G. L. Courville, in charge of Train LC-7, Engine 8226, transmitted by telephone a message to Tower Director Clark at Tower 40, Springfield, Massachusetts. In this message the conductor informed the director of the arrival of the train, its make-up, and time for departure. Tower Director Clark then relayed the message to Dispatcher Stewart who in turn instructed him to direct the conductor to follow Train No. 78.

Claim is made that the Agreement was violated because the conductor performed work of a telegrapher. In support of the claim Organization cites Rules 1, 2, 3, 5, and 27. It contends that because the highest officer representing Carrier gave as the sole reason for disallowing the claim the failure of Organization to name Claimants, as required in Article V, Section 1 (a) of the National Agreement of August 21, 1954, Carrier is restricted to this reason in its submission. It asserts that the identity of Claimant can readily be ascertained and, therefore, urges that the claim be allowed.

Carrier, on the other hand, maintains that it has a right to argue the merits of the claim because Organization in its ex parte submission presented as the sole issue the question of whether employees covered by the Scope have the exclusive right to handle train orders. It takes the position that by reliance on the merits solely, Organization waived its right to confine Carrier to the unnamed Claimants reason. It regards Organization's presentation of Carrier's reason concerning unnamed Claimants as a new issue which was raised for the first time in the Panel Argument. On the merits also, Carrier denies a breach of the Agreement.

Our study of the record discloses that after a conference with Organization, the highest officer designated by Carrier declined the claim under Article V of the National Agreement in a letter dated September 26, 1957. Since he did not take the opportunity to disallow the claim on its merits, Carrier is limited to the unnamed Claimants reason as the sole basis for its denial.

As to Carrier's contention that Organization raised a new issue for the first time in the Panel Argument, we find that in the ex parte submission on Page 9 of the record, Organization states:

"Under no interpretation of Article V, previously quoted, can the Carrier justify its declination of this claim on the basis that a Claimant was not named. In this instance if no available extra employees were located by the Carrier, the Carrier had, as a Claimant, Mr. H. H. Tupper. The Carrier has not denied that Mr. Tupper was available and was on his rest day and could have performed the services at Palmer on June 1, 1957."

This statement convinces us that Organization did not present the unnamed Claimant consideration for the first time at the Panel Argument. It, therefore, did not waive its right to restrict Carrier to the only reason it gave on the property for disallowing the claim. Carrier is precluded from its right to consider the claim on its merits.

Consequently, the only question remaining for us to determine is whether Claimant is identifiable. As in Awards 9205, 10238, 10533, and 10576, we find that Claimant can be ascertained; hence, the claim is allowed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.