

Award No. 12473
Docket No. TE-10738

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of The Railroad Telegraphers on the Pittsburgh and West Virginia Railway, that:

1. On the 18th day of February, 1957, T. A. Neelan, duly authorized representative, The Order of Railroad Telegraphers, filed claim with General Superintendent W. E. Robinholt, duly authorized carrier officer to receive same as follows:

1. Carrier established in fact an Agent-Operator position at Large, Pa., when on January 21st, 22nd, 23rd and 24th, 1957, it required or permitted the checking of tracks, making up switch lists and transmitting yard report from that point; and

2. The Carrier violated the Scope and other rules of the Telegraphers' Agreement when it required or permitted the checking of tracks, making up switch lists and transmitting of yard report from Large, Pa., (Ore Dump) by Train Masters, employees not covered by the Telegraphers' Agreement; and that

3. The Carrier shall compensate the senior idle extra agent-operator who has not had 40 hours in his work week, 8 hours at straight time rate.

4. If no extra agent-operator available the Carrier shall compensate a senior idle employe on his rest day at time and half rate for each and every day commencing on January 21st, 1957 and continuing thereafter so long as such work is performed by employees not covered by Telegraphers' Agreement.

2. On March 11, 1957, Mr. Robinholt declined the claim and on March 30, 1957, his decision was rejected and appeal taken to Mr. C. H. Manoogian, Manager of Labor Relations, duly authorized officer to receive such appeal.

3. No reply was received by Mr. Neelan from Mr. Manoogian in writing and on June 8, 1957, Mr. Neelan requested payment of the claim as presented under the provisions of Article V, Section 1(a), August 21, 1954 Agreement. It was not until September 13, 1957 that Mr. Manoogian declined the claim in writing.

4. Carrier violated the provisions of Article V, August 21, 1954 Agreement in failing and refusing upon due request to Mr. Neelan dated June 8, 1957, to allow the claim as presented.

5. Carrier shall now be required to allow the claim as presented and to compensate all employees entitled to receive compensation as requested in the claim as presented.

EMPLOYEES' STATEMENT OF FACTS: There are in full force and effect collective bargaining agreements entered into by and between The Pittsburgh and West Virginia Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreements are on file with this Division and are, by reference, incorporated into this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in accordance with the usual manner of handling through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

1. On the 18th day of February, 1957, General Chairman T. A. Neelan filed claim with General Superintendent W. E. Robinholt, as follows:

"Claim is presented as follows:

STATEMENT OF CLAIM:

1. Carrier established in fact an Agent-Operator position at Large, Pa., when on January 21st, 22nd, 23rd and 24th, 1957, it required or permitted the checking of tracks, making up switch lists and transmitting Yard Report from that point; and

2. The Carrier violated the Scope and other rules of the Telegraphers' Agreement when it required or permitted the checking of tracks, making up switch lists and transmitting of Yard report from Large, Pa., (Ore Dump) by Train Masters, employees not covered by the Telegraphers' Agreement; and that

3. The Carrier shall compensate the senior idle extra Agent-Operator who has not had 40 hours in his work week, 8 hours at straight time rate.

4. If no extra Agent-Operator available, the Carrier shall compensate a senior idle employee on his rest day at time and one half rate for each and every day commencing on January 21, 1957, and continuing thereafter so long as such work is performed by employees not covered by Telegraphers' Agreement.

These claims were denied by the General Superintendent on March 11, 1957, and the Organization was so informed by letter of that date. Later, he wrote to C. H. Manoogian, the highest designated officer on the property for labor matters, expressing to this highest officer the Organization's rejection of the General Superintendent's decision. The General Superintendent was not notified in writing of the rejection of his decision.

The rule requires that the representative be notified in writing within that time—that is, within sixty (60) days and prior to the appeal. No interpretation can be reached except that a definite letter of rejection must be sent to the representative. Such was not done in this instance—and the Claim must "be considered closed."

Furthermore, it is extremely doubtful that the Time Limit Rule is of any significance in this proceeding. The Time Limit Rule is a rule of procedure—which procedure need be followed only when a claim having a color of substance is involved. The Carrier feels that procedural rules should not be used to rectify or substitute for substantive deficiency.

The Carrier urges that the Claim should be denied.

OPINION OF BOARD: On the 18th of February, 1957, the Order of Railroad Telegraphers filed this claim with the Carrier, stating that on January 21, 22, 23 and 24 of 1957, it permitted Train Masters to check tracks, make up switch lists and transmit Yard Reports from Large, Pennsylvania. This work was alleged to properly belong to the Operators and was a violation of the Scope Rule of the Agreement when it required or permitted this work to be performed by Train Masters, not covered by the Telegraphers' Agreement.

The claim sought compensation for the senior idle extra Agent-Operator who has not had 40 hours in his workweek, or 8 hours at the straight time rate. If no Agent-Operator is available, the Carrier shall compensate a senior idle employe on his rest day at the time and one-half rate for each and every day commencing on January 21, 1957, and continuing thereafter so long as such work is performed by employes not covered by Telegraphers' Agreement.

The facts reveal that at this point an Ore Dump was located and a Train Master checked tracks of the General Services Administration's Storage Tracks, made up switch lists showing loads and empties on each track, corrected wrong numbers on waybills, kept Chief Dispatcher informed regarding number of loads and empties there and the number of loads to bring in, also kept Agent at Clairton informed on cars for demurrage purposes and sent in Yard reports at close of each business day.

On March 11, 1957, the Carrier, by correspondence, denied the claim, stating, "If such work was performed, as you claim, it would not be considered the exclusive work of telegraphers." Subsequently, on March 30, 1957, the Organization appealed the decision of the Carrier to the Manager of Labor Relations, "... Will you please advise a conference date to discuss same?" The Manager of Labor Relations replied to this appeal on September 13, 1957, denying the Claim.

The Organization contended that the Manager of Labor Relations under the provisions of Article V of the Agreement, should have responded to the letter of appeal dated March 30, 1957, no later than May 29, 1957. Thus, when he delayed until September 13, 1957, to reply, and no waiver was agreed to, Article V was violated.

Article V states:

"* * * * *

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. . . ."

The Carrier replied to the claim on the merits by alleging that the assignment of work was not in violation of the Agreement, but a prerogative of management. The work was not the exclusive work of the Agent-Operator to perform, nor have they so performed this work at Large, Pennsylvania, or other locations. The work is also incidental to the work of Train Masters.

In reply to the violation of Article V, which was not denied, the Carrier alleged that the claim was improperly processed on the property. The Claimant had failed to notify the Superintendent in writing after his denial that an appeal was to be taken. In reply to the issue raised by the allegation that Article V had been violated, the Carrier contended that the rule only applies to substantial claims, rather than those without substance.

The Organization's reply to the above alleged violation of Article V was that on March 30, 1957, when the letter of appeal was sent to the Manager of Labor Relations, a copy of said letter was directed to the Superintendent, stating, in part, "Mr. Robinholt's decision is not satisfactory, hence this appeal to you."

Thus, we are of the opinion that this letter was in compliance with the requirements of Article V.

The issue presented here is the application of Article V, Rule to the facts presented, rather than whether the Agreement was violated on the merits.

A review of the record, supporting evidence and the Awards of this Board reveals that the contentions of the Complainant are well taken. The Rule, as exemplified in Article V, requires the Carrier to respond within 60 days from the date the claim, grievance or appeal is filed, by notifying the Claimant or his representative, in writing the reasons for the disallowance of such claim. This requirement is mandatory, not a matter of choice or dependent upon the type or quality of the claim. This notification in writing within 60 days from the date the appeal was filed was not done in this dispute.

Thus, the Agreement was violated, as the contentions of the Carrier are not supported by the Rules.

The issue before this Board has been the procedural defect, rather than on the merits of the dispute involved. Such matters not contained in the submission, relating to other occasions when violations were committed, although not alleged in the claim, or limitations of the claim to September 13, 1957, when the denial of the claim was received by the Claimant, or 60 days after the claim has been filed, has not been considered in this dispute as such issues were not discussed on the property or contained in the submission. Furthermore, we must examine Circular No. 1, National Railroad Adjustment Board Rules of Procedure for guides. Wherein it states:

“POSITION OF CARRIER: Under this caption the carrier must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of carrier's position must affirmatively show the same to have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.”

The only issue presented in this dispute was the violation of Article V, and that violation was not denied by the Carrier. Thus, we are unable to rule on the issue of the violation of the Rule on other occasions than presented in this claim or the question of when the claim should be terminated, as those issues were not placed in issue in this claim.

These matters must be resolved on the property, and if one of the parties is aggrieved, by appeal to this Board.

We are of the opinion that Article V of the Agreement was violated.

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 sustained according to the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.

**CARRIER MEMBERS' CONCURRING OPINION
TO
AWARD 12473, DOCKET TE-10738 (Referee Kane)**

We concur in that portion of the Opinion which holds:

" * * * we are unable to rule on the issue of the violation of the
Rule on other occasions than presented in this claim * * * "

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