

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

HUDSON AND MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Hudson and Manhattan Railroad Company that:

(a) The Carrier promptly take the necessary steps to provide relief coverage on Tour A-9 on Friday; in addition to Thursdays, which are now covered by relief Tour No. A-13.

(b) The Carrier assign Mr. M. Hobby, Jr., occupant of Tour A-9, to work his position on the second of his rest days, Friday, until such time as this day is included in a relief assignment.

(c) The Carrier commencing Friday, November 13, 1959, and continuing until the Friday is included in a relief assignment, pay Mr. Hobby eight (8) hours at time and one-half rate for each Friday, for service performed, or for such service to which entitled but not assigned.

Furthermore, the above claim originally submitted by General Chairman J. J. Reese to Mr. A. D. Moore, Superintendent Signal System and Way on January 11, 1960, should now be allowed in its entirety by virtue of the fact that Mr. Moore failed to notify General Chairman Reese of his decision within the prescribed time limits of Rule 61 (c) of the Signalmen's Agreement. (Carrier's File No. Time Claim No. 149.)

EMPLOYES' STATEMENT OF FACTS: On January 11, 1960, General Chairman J. J. Reese filed a claim with Mr. A. D. Moore, Superintendent Signal System and Way. The claim was filed in behalf of Signal Repairman M. Hobby, Jr., account the Carrier had failed to provide proper relief coverage for Tour A-9 on one of the rest days (Friday) of this seven day position. General Chairman Reese's letter of claim dated January 11, 1960, read as follows:

"Formal claim, as follows, is hereby filed by the Signalman's Committee.

CONCLUSION

Carrier submits that the employee's claim was without merit, but concedes that because a timely disposition was not made on the property, the claimant is entitled to the amount demanded for November 13, 1959. In all other respects, the claim should be denied.

OPINION OF BOARD: The merits of this claim were not discussed by either side. The only question is whether the continuing claim should be sustained "*as presented*" or limited to the time the carrier actually declined the claim on the property.

The claim was filed on January 11, 1960 for continuous payment from November 13, 1959 until the relief position in dispute was established.

On March 3, 1960 the Carrier denied the claim on its merits but admitted that it had failed to meet the time limit rule in Rule 61 (c). It agreed to pay the claim, however, for November 13, 1959 only since, in the Carrier's opinion, the Agreement does not provide for continuous claims. On March 10, 1960, however, the Carrier changed its mind and denied the claim in its entirety. Upon further consideration and still contending that the Agreement does not provide for continuous claims, the Carrier on May 27, 1960 agreed to pay the claim for November 13, 1959 for failure to meet the time limit rule.

The relief position in issue was established commencing June 17, 1960, hence the dispute with respect to the position terminated on June 10, 1960.

The validity of continuing claims is too well established for the Carrier's position on this point to be seriously considered.

It does not seem to be well established, however, whether the Carrier is obliged to pay continuing claims "*as presented*" when it fails to observe the time limit rule or pay only that part of the claim up to the time it actually declines the claim. If the claim in this case were paid, as presented, the Carrier would be required to pay the claim up to June 10, 1960. If the claim were paid up to the time the Carrier actually declined the claim, it would be required to pay up to March 3, 1960 when it declined the claim on its merits, but agreed to pay for one day because it had failed to observe the time limit rule.

The employees' position on the question is clear. They contend that the time limit rule, which provides specifically that "*the claim will be allowed*" if the Carrier fails to notify the claimant of its decision within the prescribed time limits, means just what it says — that "*the claim*", whether continuous or not, should be allowed as presented no matter what the consequences.

While there is a division of opinion on the point, the preponderant and more recent authority is that the claim should be allowed up to the date the Carrier actually denies the claim. See Awards 8318, Daugherty; 10401, Mitchell; 10644, Bailer; 11211, Miller; 11326, 11798, Dolnick; 12713 Reagan. These opinions and others, however, which limit compensation to the date the Carrier belatedly denies the claim, do not provide clear reasons why this conclusion has been reached. At best, there is the implied argument that continuous claims should not be sustained prospectively after the Carrier belatedly denied the claim, because of potentially absurd results, as where one union claims work which actually belongs to another union.

Understandably, this rationale, having an equitable rather than a legal base, has concerned the employees who properly resist decisions which they think make rather than interpret contract provisions.

While the majority view makes good sense in equity the same results can be reached through analysis of the existing time claim and time limit rule.

Just as Rule 61 does not provide for continuing claims, but are accepted within the intention of the rules, so should it be accepted that a continuing claim is not one claim but a series of claims to which the time limit rule applies successively as each claim matures. Given such construction of "the continuing claim rule," it follows that each of the series of claims should be allowed (measured by days since this is the standard used in the time claim and time limit rule) for so long as the Carrier remains in default of the time limit rule. At the point the Carrier notifies the claimant in writing of its decision, the Carrier cures its procedural default and the substantive issue is joined prospectively. If the employees win on the merits, their claim will be sustained for the full period of the claim. If not, their claim will be sustained for the period in which the Carrier was in default of the time limit rule.

In this case, the employees did not support their claim substantively, hence the claim cannot be sustained for the full period. The claim can be sustained, however, up to March 3, 1960 since this was the first time the Carrier notified the claimant in writing of its decision.

FINDINGS: The Third Division of the Adjustment Board, 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

Item (c) of the claim is sustained, except that Carrier's obligation to pay the claim shall not extend beyond March 2, 1960.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1964.