Award No. 14608
Docket No. CL-14448

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5464) that:

(1) The Bureau violated the Clerks' Agreement and the terms of Memoranda of Agreements between the parties signed at Chicago, Illinois, dated July 12, 1956, July 30, 1956 and October 29, 1958, when it failed to assign regular employes to perform Sunday work on June 12, 1960, at Enid, Oklahoma, and by unilateral action used persons without seniority instead.

(2) The names of the employes entitled to the claim, the amount of overtime performed by the persons without seniority and the elevators listed herein, together with the straight time rate of pay for the claimants is as follows:

UNION EQUITY "A" ELEVATOR FOR TEN (10) HOURS

J. C. Steiger	@	$2.238 per hour
F. Dickson	@	2.238 per hour
N. L. Freeman	@	2.204 per hour

UNION EQUITY "B" ELEVATOR FOR NINE (9) HOURS

J. E. Willis	@	$2.238 per hour
E. D. Freeman	@	2.204 per hour
E. V. Gentry	@	2.204 per hour

UNION EQUITY "Y" ELEVATOR FOR EIGHT AND ONE-HALF (8½) HOURS

H. L. Bishop	@	$2.238 per hour
J. A. Martin	@	2.238 per hour

UNION EQUITY "Z" ELEVATOR FOR NINE (9) HOURS

C. D. Freelove	@	$2.238 per hour
A. Freeman	@	2.204 per hour
R. D. Lukenbaugh	@	2.204 per hour
M. Whitehorn	@	2.204 per hour

(3) The employes named shall now be compensated at time and one-half rate of their respective positions for the number of hours worked on Sunday, June 12, 1960, as listed in part (2) hereof.

EMPLOYES' STATEMENT OF FACTS: There is no dispute between the parties that the employes named, rates of pay and the amount of overtime work that was performed on June 12, 1960, represents the regular employes with seniority, their correct rate of pay and the correct amount of overtime that was performed at the Grain Elevators named in part (2) of the Statement of Claim.

The Employes' filed claim on July 19, 1960, with the Foreman at Enid, Oklahoma, and outlined the information in their Exhibit No. 1, pages 1 and 2, notifying the Bureau they did not comply with our Rules Agreement together with the Memorandum of Agreements dated July 12, 1956, July 30, 1956 and October 29, 1958.

It will be noted the claim letter was referred by the Grain Door Foreman to the Bureau's District Manager, F. C. Schumacher, at Kansas City, Missouri, for reply and the reply of August 16, 1960, as shown by Employes' Exhibit No. 2 was very brief and made no reference to the Memorandum of Agreement dated October 29, 1958, nor the fact the Bureau had used employes with no seniority rights as covered by the revised agreement of July 12, 1956, and the Letter of Understanding dated July 30, 1956.

The Employes' appealed District Manager, F. C. Schumacher's decision to the Bureau Chicago office on September 20, 1960, as shown by Employes' Exhibit No. 3, at which time the Bureau was advised that Rule 34 (i) of the Rules Agreement does not give the Bureau the relief they were seeking.

The General Chairman's letter was acknowledged by the Bureau Chicago office as shown by Employes' Exhibit No. 4 and brings forth the statement there are several aspects to this claim that should be discussed in conference and the time limits are therefore extended by agreement with the General Chairman's letter of October 28, 1960, as shown by Employes' Exhibit No. 5.

This dispute was included in the parties conference at Chicago, Illinois on April 17, 1963, and during this conference. Bureau was informed the subject matter of the claim is covered by our Rules Agreement, especially, Rule 34 (d) pertaining to any additional help that may be required should be assigned on the basis of seniority, the Memorandum of Agreement last revised July 12, 1956, (Employes' Exhibit No. 7) and Letter of Understanding dated July 30, 1956, (Employes' Exhibit No. 8) which, under item (1) specifically prohibits the use of employes without seniority in preference to employes with seniority. Also, the Memorandum of Agreement dated October 29, 1958 (Employes' Exhibit No. 9) eliminates seven day service and establishes Sunday Work as Such at time and one-half and is to be performed first by the Leadman and then by the Serviceman assigned to the Elevator or Mill where work is required.

At this conference the General Chairman was told the only thing the Bureau could claim is that in handling the claim papers the organization violated Article V of the August 21, 1954 Agreement. The Bureau's letter of April 23, 1963, as shown by Employes' Exhibit No. 6 confirms the statement just made in that the only exceptions being taken by the Bureau in declining the claim is reference to Article V of the August 21, 1954 Agreement.

the General Chairman to the contents of our letter of August 25, 1961. (See Bureau Exhibit No. 23.)

Bureau Exhibit No. 24 is the Bureau's answer to the General Chairman's letter of September 20, in which we have reiterated our contention that we have not received an objection from the General Chairman before this date protesting the procedure to be followed by he and his Organization as well as the employes was not understood.

Bureau Exhibit No. 25 is further correspondence received from the General Chairman following a conference with him concerning the Bureau's revision of previous instructions to the Organization for filing claims with the proper Bureau officers authorized to receive same.

Bureau Exhibit No. 26 is our answer to the General Chairman, which is self-explanatory.

(Exhibits not reproduced.)

OPINION OF BOARD: Only a procedural issue is before the Board. There is no disagreement on the merits.

Respondent contends that the claim is not valid because the Petitioner did not submit it to the officer authorized by the Carrier to receive it. It, therefore, did not meet the requirements of Article V of the August 21, 1954 National Agreement.

Respondent had instructed the General Chairman that the duly authorized representative of the BRC should initially present claims addressed to the Bureau's District Manager in the district where the alleged claim originated. On July 19, 1960, however, the District Chairman addressed this claim to Mr. A. M. Reed, Foreman. The claim should have been addressed to the Bureau's District Manager, F. C. Schumacher.

Petitioner argues (1) that the Bureau had first advised Petitioner to file claims with its District Manager on December 22, 1961, effective January 1, 1962, almost eighteen months after this claim was presented, and (2) that the Bureau waived the procedural defect when the District Manager declined the claim on the merits and did not raise the issue of procedural defect.

The record shows that the Bureau wrote to the General Chairman on May 27, 1955, and again on June 17, 1955, that to comply with Article V of the August 21, 1954 Agreement, claims must be presented to the District Manager of the district where the claims originated. On June 15, 1955 the General Chairman inquired if these instructions referred "to grievances or claims that are filed only by the General Chairman and not to the grievances or claims filed by the individual employe?" On July 11, 1955, Carrier replied as follows:

> "If and when an employe decides to file a claim or grievance in his own behalf, there, of course, is nothing we can do to prevent him from filing whatever claim or grievance he may have with his immediate supervisor, such as Foreman, Agent, etc. and inasmuch as that is something beyond our control we, of course, must accept such claims or grievances as may be filed by the individual but again let me re-

iterate when such matters are addressed by a duly accredited representative we prefer that they be handled as outlined to you in our previous correspondence."

The claim before this Board was filed by a duly accredited representative of the Petitioner and not by the individual employes.

These instructions were not rescinded in the memorandum of December 22, 1961. They were modified in detail, but nowhere is Petitioner authorized to present claims to Foremen. Petitioner was advised long before July 12, 1960 that this type of claim must be filed with and addressed to the District Manager.

It is true, that Petitioner's letter of July 19, 1960, addressed to the Foreman was answered by District Manager, Schumacher, to whom the claim should have been first addressed. And it is also true that Mr. Schumacher did not raise the procedural issue, but denied the claim on the merits. The Bureau did, however, raise the procedural issue on the property in later handling of the claim.

Decision 5 of the National Disputes Committee, dated March 17, 1965, ruled as follows:

"If the issue of non-compliance with the requirements of Article V is raised by either party with the other at any time before the filing of a notice of intent to submit the dispute to the Third Division, it is held to have been raised during the handling on the property."

See Award 14355. The issue of non-compliance with Article V in this case was raised before Petitioner filed a notice of intent to submit the dispute to this Division.

Petitioner also contends that the "Bureau is not on good ground when it raises a procedural objection for the first time, almost three years after the claim was filed." The fact is that the Bureau's Assistant Manager wrote to the General Chairman on October 24, 1960, in part, as follows:

"There are several aspects to this situation which I believe should be the matter of discussion between you and the writer, therefore, I would be willing to hold this file in abeyance until such time that we have had an opportunity for a conference, however, I would like to receive your concurrence as well as an acknowledgment of this letter."

And the General Chairman agreed on October 28, 1960, to hold this claim in abeyance until a conference is held.

This conference was not held until April 17, 1963, at which time the Bureau raised the procedural issue, and this was repeated in a letter to the General Chairman dated April 23, 1963.

The reason for the unreasonable delay is not altogether clear in the record. But the fact is that the claim was still in the process of handling on the property in April, 1963. Nowhere in the record does the Petitioner present evidentiary facts attributing this delay to the Carrier.

Irrespective of the inequities occasioned by the delay, the principle adopted by the National Disputes Committee in Decision No. 5, and heretofore quoted, is controlling. Petitioner cites Decision No. 15 of the National Disputes Committee, dated March 17, 1965, in support of its position. In that dispute the Committee ruled that there was no extension of the time within which a decision was to be rendered. Here, however, the parties agreed to such an extension. They agreed to hold the claim in abeyance until a conference was held. We are, therefore, obliged to dismiss the claim in accordance with Decision No. 5 of the National Disputes Committee.

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 Employes involved in this dispute are respectively Carrier and Employes 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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1966.

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