



Award No. 14759

Docket No. TE-13367

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

**ATLANTA AND WEST POINT RAILROAD—
THE WESTERN RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point Railroad—Western Railway of Alabama, that:

1. Carrier is in violation of Article 22, Section 1(a), of the parties' Agreement by declining to compensate Extra Telegrapher S. M. Davis the face amount of a claim presented in his favor for a violation occurring on January 23, 1961.

2. Carrier shall be required to pay Mr. Davis a day's pay at the applicable rate, less the arbitrary call payment made.

EMPLOYEES' STATEMENT OF FACTS: The only issue in dispute under this appeal is whether Carrier is obligated, under Article 22, Section 1(a) of the Agreement, to allow Mr. S. M. Davis the difference between the claim of a day's pay (eight hours) as presented, and the call payment (three hours) arbitrarily made by Carrier.

There is no dispute between the parties in respect to Carrier's failure to render decision on the claim presented. Carrier admits its failure to meet the mandatory requirement of rendering decision within the stipulated sixty days allowable therefor.

Therefore, no lengthy elaboration of details relating to the incident which initially gave rise to the filing of the claim is deemed necessary, and the following resume in this respect will disclose the basis for the initial charge of Agreement violation and filing of claim.

On January 23, 1961, Conductor J. L. Mills handled (received, copied, repeated and delivered) Train Order No. 4 at a spur track (blind siding) at Reeses, Alabama, located outside of Montgomery. This work was performed at 7:40 A. M. The claim was presented in favor of idle Extra Telegrapher S. M. Davis for a day's pay of eight hours for the violation.

Article 20, captioned 'Handling Train Orders,' is the governing rule and provides that in cases of this kind where an operator is employed and available, or can be promptly located, except in an emergency, the telegrapher will be paid for the call—that is, the telegrapher on duty. Under the clear terms of the agreement that is all that you are entitled to and could claim. The correct solution to the problem would be to deduct the call paid Extra Telegrapher Davis and pay same to you as Mr. Smith has already been compensated.

The agreement specifically sets out what will be paid in cases of this kind and it is my position that you cannot claim additional pay under the time limit on claims rule and use same, which is in conflict with Article 20 in this case, as a lever to gouge additional money out of the railroad. I am entirely willing to deduct the call paid to Mr. Davis and pay same to you, but I certainly am not going to pay approximately \$28.00 for the issuance of two train orders.

It is true that Mr. King did not reply to your letter within the time limit, but since the agreement specifically prohibits you from claiming any additional money in cases of this kind, I cannot see where his failure to reply to your letter changes the clear contractual provisions of Article No. 20. Your claim is declined."

Subsequently this matter was handled in conference with Mr. Fuller and claim declined for reasons set out in the above letter.

OPINION OF BOARD: This dispute involves the application of Article 22 (Time Limit Rule) of the parties agreement. On February 22, 1961, a claim was filed by the General Chairman with the Assistant Superintendent, alleging violation of the agreement, on January 23, 1961. The compensatory claims requested that W. B. Smith be paid \$7.59 (a call) and that S. M. Davis be paid one day's pay (\$20.24).

Not having had reply from the Assistant Superintendent, on May 12, 1961, the General Chairman traced him for reply and requested that the claim be allowed under the provisions of Article 22, because it had not been disallowed within 60 days after being filed with the designated officer. Under date of June 6, 1961, Assistant Superintendent T. P. King advised General Chairman Fuller:

"Due solely to the fact that the sixty day time limit (Article 20) has expired, we are allowing Operator Smith and Davis one call each account Conductor J. L. Mills handling train order 23 on January 23, 1961."

The Union contends that the Company was obligated to pay Mr. Davis the sum of \$20.24, because of the default. The Company contends that the day's pay is not proper, because the claim was not supported by the agreement rules. In this case, it is immaterial whether the claim was valid or not. We are not concerned here with the merits of the claim, but applicability of the Time Limit Rule. In the dispute that resulted in Award 10138, the Board said:

"If the Carrier considered the grievance as a 'fancied' but not

a 'real' wrong, it was privileged, according to the Agreement, to reject the claim within the prescribed period."

Since it is admitted here that there was a default by the Assistant Superintendent, the Carrier became obligated to allow the claim as presented. Claimant S. M. Davis, is entitled to the further sum of \$12.65.

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 was violated.

A W A R D

Claimant S. M. Davis is allowed \$12.65 in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1966.