

Award No. 15448
Docket No. TE-14561

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

NEW YORK CENTRAL RAILROAD
(Southern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central System (CCC&StL District), that:

1. Carrier violated the Agreement between the parties when on Sunday, June 17, 1962, it caused or required the assigned agent, Mr. R. E. Foust, at Mt. Carmel, Illinois service center to serve a station not assigned to him under dualization of stations plan of the Carrier, and failed or refused to call the regular assigned assistant agent-operator territory No. 11-A to serve patron Paul Crumrin at West Union, Illinois, in billing grain, work assigned to him on his regular week day assignment.

2. Carrier shall now pay Mr. R. E. Foust, agent, Mt. Carmel service center, for a day eight (8) hours at time and one-half rate of his position.

3. Carrier shall pay Mr. K. E. Atkins, regular assigned assistant agent-operator territory No. 11-A, for a day, eight (8) hours at current time and one-half rate applying to his assigned territory of which West Union is assigned.

4. Carrier shall also pay the senior idle employe, extra in preference, for a day, eight (8) hours at the Mt. Carmel, Illinois rate service center agency for such work unilaterally assigned to the clerk to do, and continue to pay them for each and every violation occurring until such violation is corrected.

5. Carrier violated August 21, 1954 Agreement when Rules Examiner Schomaker failed to notify District Chairman McGowan within sixty days from date above paragraphs 1 through 4 of claim were filed in writing of his disallowance of claim.

The right is reserved to examine the Carrier's personnel records to determine the senior idle employe, extra in preference, entitled to the day each violation occurs.

Paris, Illinois, (the northern terminus of the route), located approximately forty-one miles north of Trimble, Illinois, (the southern terminus of the route), was designated as the headquarters for the Assistant Agent-Operator. Terre Haute, Indiana, was designated as the Service Center, with the agent at that point supervising, among other duties, the work of the Assistant Agent-Operator on Illinois No. 11-A.

Shippers are also accorded the privilege, as they are on all Carrier's Centralized Agency Routes, of telephoning direct to the Service Center toll free at any time the Assistant Agent-Operator is not available or when it is more convenient for them to do so. This service includes many matters, one of which concerns billing of cars.

On Saturday, June 16, 1962, which was one of the relief days of the Assistant Agent-Operator on Territory No. 11-A, Mr. Paul Crummin, an operator of a grain business at West Union, had a carload of grain ready for movement to Standard Manufacturing Company, Buffalo, New York. The switch run, on the southbound leg of its trip from Paris, Illinois, to Mt. Carmel, Illinois, picked up this carload of grain along with a letter from the shipper addressed to the agent, containing billing instructions on the car. The car was weighed at Mt. Carmel on the following day—June 17, 1962—and billed by the Bill Clerk at that point.

OPINION OF BOARD: Claim was filed on August 15, 1962. Carrier failed to deny it in writing with reasons until October 30, 1962. Petitioner moves that the Claim be allowed as presented because of Carrier's failure to comply with the 60 day time limitation prescribed in Article V of the August 21, 1954 Agreement. At the ultimate appeal level on the property a like demand was duly made by Petitioner.

In NDC Decision 5 it was held:

"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 handling on the property."

Motion granted; Carrier's liability terminating as of October 30, 1962. NDC Decision No. 16.

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 Carrier failed to comply with Article V of the August 21, 1954 Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of March 1967.