

Award No. 15457
Docket No. TE-14404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

FIRST:

1. Carrier improperly and in violation of Agreement, effective February 23, 1962, diverted Mr. U. J. Drouin from his regular assigned relief position as towerman-telegrapher, P&L Junction Tower, to first trick agent-telegrapher position at P&L Junction Freight Station and failed to compensate him in accordance with Agreement rules.

2. As a result of the violation set out in Item No. 1 above, Carrier shall pay U. J. Drouin at the pro rata hourly rate of his regular relief position for all actual time each day Carrier required that he suspend work during his regular hours at P&L Junction Tower, beginning February 23, 1962, and at time and one-half the hourly rate of the P&L Junction agent-telegrapher position for all time each day, beginning February 23, 1962 Carrier required that U. J. Drouin work on the P&L Junction agent-telegrapher position outside the assigned hours of his regular relief position and, in addition thereto, \$1.00 expense allowance as provided in Rule 6(a) to cover each day diverted.

SECOND:

1. Carrier violated the provisions of Article V of the August 21, 1954 Agreement by failing to render a decision within the allowable time limit therefor.

2. As a result of the above default, Carrier shall be required to allow the claim as presented, as shown in First above.

EMPLOYEES' STATEMENT OF FACTS: The correspondence exchanged between the parties very clearly sets forth the facts of the case upon which the claim has been filed, the basis for the claim predicated upon the given

The Agent-Telegrapher (Samuel Cully) upon completion of his tour of duty Wednesday, February 21, 1962, submitted resignation by telegram to be effective immediately. This resignation was received by the System Supervisor of Operations the following morning, Thursday, February 22, 1962, and as there were no qualified Agent-Telegraphers on the extra list, the first trick Towerman-Telegrapher (C. Burbank) at P&L Junction, observing one of his two rest days, was used to protect the Agent-Telegrapher's position for that one day only.

Starting Friday, February 23, 1962, there continued to be no qualified Agent-Telegraphers on the extra list, the claimant, being a qualified Agent regularly assigned as Relief Towerman-Telegrapher at P&L Junction, was withheld from his assignment to protect the Agent-Telegrapher's position, the extra list employee first out who had the qualifications as Towerman-Telegrapher but not as an Agent-Telegrapher was then used to fill claimant's vacancy. The claimant was used to protect the Agent-Telegrapher vacancy until a regular Agent-Telegrapher was assigned and assumed the duties of that position May 25, 1962.

SECOND

The claim as shown in the Statement of Claim "First" was appealed to the Chief of Personnel May 12, 1962. Conference was held May 24, 1962, and the claim was discussed with ORT representatives Vice President Kinkaid and General Chairman North. Verbal denial was given and understanding had that decision would be rendered in writing following completion of investigation and reconsideration of the new and additional information presented by the General Chairman. This was completed on July 16, 1962, and by letter of that date, the General Chairman was advised the decision given him at conference May 24, 1962 "remains the same."

As the claims in parts one and two are without merit and unsupported by fact or rule they were denied.

OPINION OF BOARD: Claimant's Second Claim is that the Carrier violated the provisions of Article V of the August 21, 1954 National Agreement, which article provides in pertinent part:

"(a) . . . 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 employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented. . . .

* * * * *

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer. . . ."

This Board finds that the Carrier did violate the above cited provisions of Article V. General Chairman North's letter of May 12, 1962 to Mr. C. L. Wagner, Chief of Personnel of the Carrier, was on appeal to a higher officer of Carrier, within the meaning of Article V(c). The Carrier had 60 days within which to disallow the claim and (1) notify the appellant, (2) in writing, (3) together with the reasons for the disallowance. Failure to meet these

affirmative requirements within the 60-day period would automatically invoke the following provision of Article V(a):

"If not so notified, the claim or grievance shall be allowed as presented. . . ."

The Carrier's written disallowance of the claim is dated July 16, and does not meet the 60-day limitation.

Carrier contended it verbally disallowed the claim at a May 24 conference with General Chairman North. A verbal disallowance is clearly insufficient, since Article V requires a written disallowance, supported by the reasons for the disallowance.

Carrier finally contends that at the May 24 conference it undertook, at General Chairman North's request, to investigate certain matter and reconsider its verbal disallowance of the claim. Carrier's position is either that this tolled the running of the 60-day period or that the claimant is estopped from invoking the benefits of the 60-day period. This position is untenable, for the Agreement specifically provides in Article V(b) the method for extending the 60-day period:

"(b) . . . It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose." (Emphasis ours.)

This Board finds no evidence of any agreement to extend the 60-day period for the Carrier's decision. The claim "shall be allowed as presented."

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.

AWARD

Claim sustained as presented.

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.

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