



Award No. 15666
Docket No. TE-14527

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Agreement, when on the 7th day of January, 1962, it required and permitted Roadmaster Desselle to reopen the Opelousas, Louisiana, communication office and transmit two messages directly to the train dispatcher at DeQuincy, Louisiana.

2. Carrier shall compensate Telegrapher R. C. Musgrove the difference in pay at the punitive rate from the two (2) hours received to that of eight (8) hours at \$3.69 per hour account work performed on Sunday, second rest day, in accordance with Rule 15, Section 1 (M)(11)(B)(1)-(A) of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant R. C. Musgrove is the regular assigned Telegrapher-Clerk at Opelousas, Louisiana. His position as Telegrapher-Clerk has assigned hours of 11:00 P. M. to 7:00 A. M. with rest days of Saturday and Sunday. His first rest day would begin at 11:00 P. M. on Saturday, January 6th. The Carrier called Claimant Musgrove to perform service on his first rest day and he worked from 1:20 A. M. on Sunday, January 7th to 3:20 A. M. on Sunday, January 7th. At approximately 4:00 A. M. on January 7th or about thirty minutes after Claimant was released, Roadmaster Desselle transmitted the following two messages:

“Opelousas, Louisiana
January 7, 1962

RDM DeQuincy

Impaired overhead and side clearance House Track Arnaudville.

/s/ J. L. D.”

is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. . . ."

The Division Superintendent is the Carrier officer authorized to receive claims involving alleged violations of the Agreement and other grievances. The instant claim was not presented to the Superintendent within 60 days as set forth in Article V of the Agreement dated August 21, 1954.

9. Subsequently, the Superintendent, Assistant General Manager and Director of Labor Relations denied the claims as presented by Mr. Musgrove. Following conference on October 23, 1962, the Director of Labor Relations again declined the claim and on November 1, 1962, the Organization's General Chairman advised that the decision was not acceptable. On August 15, 1963, the Carrier received notice from the Third Division, National Railroad Adjustment Board, that the Employes would file an ex parte submission covering this case with the Division.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier moves that this claim be dismissed on the ground that it was not filed, within 60 days of the date of occurrence on which the claim is based, with the officer of the Carrier authorized to receive it. The claim was filed on January 10, 1962 with Division Trainmaster Morris and related to an occurrence on January 7, 1962. The Carrier introduced no evidence to support its contention that the claim should have been filed with the Division Superintendent. For failure to sustain its burden of proof, the Carrier's motion is dismissed.

The Employes contend that the claim should be sustained pursuant to the time rule set forth in Article V of the August 21, 1954 National Agreement, due to the failure of the Carrier to disallow the claim within 60 days after it was filed. The claim was filed on January 10 and written notification of the disallowance was not received until March 22. This period of time exceeds 60 days. The claim must be allowed as presented.

The claim, as originally filed on January 10, was amended by the claimant on January 31. The Board finds that this amendment did not alter the essential nature of the claim so as either to constitute a new claim or to prejudice the Carrier. The amendment related back in time to the date of the original filing and did not, therefore, re-commence the 60-day period within which the Carrier was required to notify, in writing, the claimant of the Carrier's decision to disallow the claim.

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 Carrier violated Article V of the August 21, 1954 National Vacation Agreement.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1967.