



Award No. 16578
Docket No. CL-16927

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6267) that:

(1) Carrier violated the terms of the currently effective agreements between the parties when it failed and refused to pay claims filed in writing which were not declined within the prescribed time limits of Article V of the August 21, 1954 Agreement.

(2) Nona E. Mize, Oklahoma City, Oklahoma now be allowed payment for claim as submitted on January 22, 1966 and not declined by the Carrier under the provisions of the Time Limit on Claims rule;

(3) Lawson Brooks, Oklahoma City, Oklahoma, now be allowed payment of claims as submitted January 21, 1966 and not declined by the Carrier under the provisions of the Time Limit on Claims Rule;

(4) Roy McConnell, Oklahoma City, Oklahoma now be allowed payment for claim as submitted on January 19, 1966 and not declined by the Carrier under the provisions of the Time Limit on Claims Rule;

(5) J. T. Johnson, Thayer, Missouri, now be allowed payment for claims as submitted on January 1, 1966 and not declined by the Carrier under the provisions of the Time Limit on Claims Rule.

EMPLOYES' STATEMENT OF FACTS: On February 7, 1965 an agreement was entered into between the Carrier and this Organization known as the Mediation Agreement (Case No. 7128) and hereinafter referred to as the February 7, 1965 National Employment Stabilization Agreement. On November 24, 1965 the same parties to the above referred to agreement rendered Interpretations to the provisions of the Mediation Agreement of February 7th which were agreed upon by the parties as having the same force and effect as the agreement itself. Due to some unique features in the new agreement and the Interpretations thereto, it was mutually agreed, as reflected by Employees'

due under provisions of the February 7, 1965 Mediation Agreement for the months of March, 1965 to October, 1966, inclusive, and each of these forms was returned to Mr. Johnson with advice that he ceased to be a protected employee as of April 9, 1965 for his failure to respond to extra work when called. Forms presented by Mr. Johnson for the months of March and April, 1965 were returned to him in error, and he and the General Chairman were each subsequently informed that if Mr. Johnson will resubmit proper forms for the months of March and April 1965, any payment due under provisions of the February 7, 1965 Mediation Agreement for the period up to April 9, 1965 will be made.

Attached as Carrier Exhibits are the following documents pertaining to the claim presented in favor of Mr. Johnson:

CARRIER EXHIBIT H-1 — Copy of Local Chairman Elting's letter of January 1, 1966 to Superintendent Cowles filing claim in favor of Mr. Johnson.

CARRIER EXHIBIT H-2 — Copy of General Chairman White's letter of October 5, 1966 to Superintendent Cowles.

CARRIER EXHIBIT H-3 — Copy of General Chairman White's letter of November 10, 1966 appealing the claim to the undersigned.

CARRIER EXHIBIT H-4 — Copy of letter dated November 25, 1966 from the undersigned to General Chairman White declining the claim as appealed.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims are based on an alleged violation of the time limit provisions in Article V, Section 1 Paragraph (a) of the August 21, 1954, National Agreement, Rule 49 of the basic Agreement which encompasses the same provisions as those in the National Agreement, the National Employment Stabilization Agreement of February 7, 1965, and interpretations of this Agreement of November 24, 1965.

On behalf of named Claimants Brotherhood contends that these employees failed to receive proper compensation and requests payment covering the difference in the amount of money earned and the money guaranteed them during the month of March and continuing in each subsequent month that they failed to receive compensation equal to the amount guaranteed under the provisions of the National Stabilization Employment Agreement of February 7, 1965, in Article IV, Sections 1 and 2. It maintains that these claims were properly presented in writing to the authorized representative of Carrier entitled to receive the claims in accordance with Rule 49 taken from Article V Section 1 Paragraph (a) of the August 21, 1954, National Agreement. However, it asserts Carrier failed to comply with the provisions of these agreements and the November 24, 1965, Interpretations to the National Employment Stabilization Agreement when it did not notify the representative of Organization who had filed the claims of the reason for disallowance of the claims within the time limits of Rule 49 and the agreed upon extension of time.

Carrier argues that the claims must be dismissed because of a failure to support the allegation that it did not pay the specified employees the amount due them under the February 7, 1965 Agreement. Moreover it points out that

the question of additional payment which Brotherhood claims under the Stabilization Agreement has been submitted to the Disputes Committee created by the Agreement and to date there has been no showing that the employees are entitled to more money.

The record indicates that Brotherhood presented in writing the claims in behalf of the employees involved in this dispute to the officer of Carrier authorized to receive them within sixty days in accordance with Rule 49. The record further discloses that Carrier regarded these claims as too vague and indefinite on the basis of the information contained in the claim letters, and, therefore, communicated to the individual employees and sent them a form to be used in requesting compensation under the National Employment Stabilization Agreement.

The record, however, does not give evidence that Carrier complied with Rule 49 which requires that the Carrier "shall notify whoever filed the claim or grievance in writing of the reason for such disallowance." Since the Representative of Brotherhood who filed the claims was not notified by Carrier of the reason for disallowance of the claims we hold in accordance with another provision of Rule 49, "If not so notified, the claim or grievance 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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.