Award No. 16858
Docket No. CL-17344

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6329) that:

1. Carrier violated the rules of the Clerks' Agreement at Ashland, Ohio, when it failed to deny claim filed on March 9, 1965 within the time limits.

2. Carrier shall compensate employe T. Schlingman for one day (8 hours) at time and one-half rate for March 6, 1965. (Claim 1646.)

EMPLOYES' STATEMENT OF FACTS: On March 9, 1965, the Local Chairman filed a claim with Agent B. H. Ransom on behalf of T. Schlingman for eight (8) hours at rate of time and one-half account violation of the Clerks' Agreement at Ashland, Ohio. (Employes' Exhibit A.) Agent Ransom denied the claim in letter dated May 7, 1965 (Employes' Exhibit B) which was posted in envelope bearing postmark date of May 10, 1965 (Employes' Exhibit C) and delivered by the postman to the Local Chairman's residence on May 11, 1965.

Account of the Agent failing to deny the initial claim within the 60 days time limit prescribed in Rule 41 of the current agreement, the Local Chairman filed claim with Agent Ransom dated May 30, 1965 (Employes' Exhibit D) which was denied by the Agent on June 14, 1965 (Employes' Exhibit E). On June 23, 1965, the Local Chairman reaffirmed his contention that claim was not denied within the time limits and advanced his reasons therefor (Employes' Exhibit F) to which Agent Ransom replied on June 30, 1965 stating "The 60 day period in which denial may be made starts with the day following receipt of the claim * * *." (Employes' Exhibit G.) On July 7, 1965, the Local Chairman wrote the Agent stating his decision was not acceptable and would be appealed. (Employes' Exhibit H.)

On July 5, 1965, the Division Chairman progressed the claim to Superintendent Henderson (Employes' Exhibit I) who denied the claim in his letter dated July 12, 1965. (Employes' Exhibit J.) On July 17, 1965, the Division Chairman notified the Superintendent that his decision was not acceptable and would be appealed. (Employes' Exhibit K.)

On July 27, 1965, the General Chairman progressed the claim to Mr. F. Diegtel, Vice-President–Labor Relations, the highest officer designated by the Carrier to handle labor disputes. (Employes' Exhibit L.) Conference was held on February 1, 1967, however, the parties were unable to resolve the dispute and claim was denied in Mr. R. A. Carroll's letter to the General Chairman dated March 22, 1967, (Employes' Exhibit M) to which the General Chairman replied on March 24, 1967 (Employes' Exhibit N).

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On March 9, 1965, Local Chairman J. E. Sheehe filed claim with B. H. Ransom, Agent, Ashland, Ohio, for Clerk T. Schlingman for one day at time and one-half, March 6, 1965, account Agent allegedly performing clerical work on claimant's rest day. Claim was received at Ashland by Agent on March 11, 1965. See Carrier Exhibit A.

Under date of May 7, 1965, the Agent denied the claim per Carrier Exhibit B. On June 1, 1965, Agent Ransom received Local Chairman Sheehe's letter dated May 30, 1965 (Carrier Exhibit C) asserting violation of Rule 41 account alleged failure to deny the claim within specified time limits. Under date of June 14, 1965, the Local Chairman was advised that there was no time limit violation and demand for payment of claim as presented was denied. Subsequent handling on the property is evidenced by Exhibits D through L.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue confronting us is strictly a Time Limit Rule question. On March 9, 1965, the Local Chairman filed a claim with the appropriate Carrier Officer. It was received by the latter on March 11th. Carrier official denied the claim by letter dated May 7th, postmarked May 10th and received by the Organization representative on May 11th. The sole question to be determined is whether the denial was made within the 60 day limitation imposed on such handling by Rule 41 of the Agreement.

We hold that the claim was filed on March 11th, the date on which it was received by the Carrier. This was the first instance wherein Carrier was officially notified of the existence of the claim. The 60 day period began to toll on March 12th. We also hold that the denial of the claim was effective May 11th, the date on which it was received by the Local Chairman. Hence, the recapitulation is as follows:

March 12 to 31, 1965 both inclusive	— 20 days
April 1 to 30, 1965 both inclusive	— 30 days
May 1 to 11, 1965 both inclusive	— 11 days
	61 days

The letter of denial was not made within the prescribed 60 day period. We will sustain 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1968.

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