



Award Number 17672

Docket Number SG-18067

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company that:

- (a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 3 and 9.
- (b) Carrier be required now to pay Mr. K. E Dutton sixteen (16) hours at the time and one-half rate applicable to Assistant Signalmen — \$4.147 per hour — for having worked Saturdays, April 22, and 29, 1967.
- (c) Carrier be required now to pay Mr. D. R. Porter eight (8) hours at the time and one-half rate applicable to Assistant Signalmen — \$4.147 per hour — for having worked Saturday, April 22, 1967, and eight (8) hours at the time and one-half rate applicable to Signalmen — \$4.789 per hour — for having worked Saturday, April 29, 1967.
- (d) Carrier violated Article V of the August 21, 1954 National Agreement when Signal Supervisor A. C. Gale failed to timely disallow claims (a), and (c) above. (Carrier's File: A-10425.)

EMPLOYEES' STATEMENT OF FACTS: Claimants in this dispute are Assistant Signalmen D. R. Porter and K. E. Dutton, whose regular assignment was Monday through Friday, with Saturday and Sunday as rest days.

The claim arose because the Claimants were required to work on Saturday April 22, and 29, 1967, their regularly assigned rest days at straight time rate, and were not permitted to work on the following Mondays, their regular assigned work days.

The Rules of the Agreement cited by the Brotherhood in support of the claim are as follows:

"RULE 3. (f) DEVIATION FROM MONDAY-FRIDAY WEEK. If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of this rule, Section (b), and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if the parties fail to agree thereon, then if the carrier never-

OPINION OF BOARD: On May 19, 1967, the following letter was mailed by Local Chairman Gale to Carrier's Signal Supervisor.

"Mulford Utah,

May 19, 1967

Mr. A. C. Gale
Signal Supvr.
5500 Ferguson Dr.
Los Angeles Cal.

Dear Sir.

I wish to present to you at this time a claim for 16 hours at the time and one half rate for Mr. D. R. Porter, and Mr. K. E. Dutton Asst. Signalmen, each for the following days. Saturday April 22, and Saturday April 29. Claim filed for noncompliance of Agreement between Union Pacific R. R. Co. and Brotherhood of R. R. Signalmen.

Will you please give this claim your consideration and advise.

Very truly yours,

/s/ B. E. PRICE

B. E. Price Local Chair. #19

c. c. J. H. Wollbrinck
Griv. Comm. #19"

The above letter was answered on May 24, 1967 as follows:

"Union Pacific Railroad Company
Transportation Division
Department of Operation

5500 Ferguson Drive
Los Angeles, California 90022

May 24, 1967

Mr. B. E. Price
838 S. 200 W.
P. O. Box 192
Milford, Utah 84751

Dear Sir:

I am in receipt of your letter of May 19, 1967, wherein you are claiming 16-hours at time and one half rate for Mr. D. R. Porter and Mr. K. E. Dutton Assistant Signalman for each, for the following days, Saturday April 22 and Saturday April 29.

Before I can give this claim consideration I need the following information. Starting time and ending time claimed on these days and also which Rule or Rules of Agreement between Union Pacific

Railroad Company and Brotherhood of Railroad Signalman you are claiming non-compliance. Please advise.

Very truly yours,

/s/ A. C. GALE

A. C. Gale

Signal Supervisor"

Thereafter and on June 4, 1967 the information requested in the May 24 letter was furnished Carrier, as follows:

"June 4, 1967

Mr. A. G. Gale
Signal Supvr.
Los Angeles Calif.

Dear Sir:

Referring to your letter of May 24, wherein time was claimed for 16 hours each, at the time and one half rate for Mr. D. R. Porter and Mr. K. E. Dutton Asst. Signalman, for the following days, Sat. April 22 and Sat. April 29.

The information you requested is as follows; Mr. K. E. Dutton started work at 6:30 A.M. April 22 to 4:00 P.M. same day. Total 9 hours. Mr. K. E. Dutton started work at 6:30 A.M. April 29 to 3:00 P.M. same day. Total 8 hours. Mr. D. R. Porter started work at 6:30 A.M. April 22 to 4:00 P.M. same day. Total 9 hours. Mr. D. R. Porter started work at 6:30 A.M. April 29 to 3:00 P.M. same day. Total 8 hours.

Time claimed for Mr. Porter 8 hours at the rate of \$41.147 per hour.

Time claimed for Mr. Porter 8 hours at the rate of \$41.47 per hour. 8 hours at the rate of \$4.789 per hour for April 29.

Rules No. 3, No. 9, and others, of the Agreement between U.P.R.R. and B. of R.S. effective April 1, 1962 have not been complied with.

Please give this claim your considerations and advise.

Very truly yours,

/s/ B. E. PRICE

B. E. Price
L.C. #19 B. of R.S.

cc. J. H. Wollbrinck
Griev. Comm. #19"

On July 31, 1967 Carrier denied the Claim as follows:

"UNION PACIFIC RAILROAD COMPANY

Office of Division Engineer
5500 Ferguson Drive
Los Angeles, California 90022

July 31, 1967

File 29-20-12

Mr. B. E. Price, Local Chairman
Lodge No. 19
Brotherhood of Railroad Signalmen
838 South 200 West
P. O. Box 192
Milford, Utah 84751

Dear Mr. Price:

Referring to your letter of June 4, 1967 relative claim on behalf of Messrs. D. R. Porter and K. E. Dutton.

Wish to advise that claim is denied as change in work week was necessitated by train operating schedules.

Very truly yours,

/s/ A. C. GALE

A. C. GALE
Signal Supervisor"

The Organization contends that 73 days expired before the Claim was denied by Carrier and that under the provisions of Article V of the August, 1954 Agreement because of its (Carrier's) failure to deny the Claim of May 19, 1967 within 60 days.

Carrier contends that the May 19 letter from the Local Chairman was so devoid of necessary information as to the nature and alleged basis for the claim, it did not constitute a claim as contemplated in Sections 2 and 3 of the Railway Labor Act and Article V of the August, 1954 Agreement. Carrier also urges that the time limit question was not raised until after the Claim was forwarded to the Organization's Grand Lodge for appeal to this Board, thereby accepting the handling of this dispute on the property as being proper and waiving any right to invoke the time limit rule.

The facts, in this instance, when considered with prior controlling awards and decisions, do not support Carrier's contentions. The letter of May 19, 1967 was designated as a "claim"; it requested a payment of money for non-compliance of the Agreement; it set out the dates of the alleged violation; and it was filed on behalf of named Claimants, together with their positions. Although it would be better practice to detail the alleged violation, the May 19 letter did constitute a Claim, and if nothing else, commenced the tolling of time within which Carrier had to file a written denial.

The May 24 letter of Carrier requesting further information was nothing more nor less than a letter of inquiry, which is not unusual in the handling of Claims on the property. In fact, the May 24 letter of Carrier acknowledged that Carrier considered the May 19 letter of the General Chairman to be a "Claim" when it stated in the second paragraph thereof, "Before I can

give this claim consideration I need the following information." This Board therefore concludes, in accordance with Award 16578 (Englestein) that a claim was filed on May 19, 1967 in language sufficient to commence the tolling of the 60 days time within which Carrier was required to disallow. To hold otherwise would permit Carriers to unilaterally determine the sufficiency of language contained in Claim notices.

Carrier's second contention, based on 1962 Award 10603, 1962 Award 10684 and 1964 Award 12633, was answered by National Disputes Committee Decision No. 5 on March 17, 1965 which 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 the handling on the property."

The record discloses that the issue of compliance with Article V of the 1954 Agreement was raised on the property on March 14, 1968 in a letter from the Organization to Carrier's Chief Engineer.

Therefore, this Claim will be sustained for the jurisdictional reason that Carrier failed to deny the Claim of May 19, 1967 within 60 days as required by Article V of the 1954 National Agreement.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January 1970.