

**Award No. 18359**  
**Docket No. CL-18609**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Paul C. Dugan, Referee**

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**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6697) that:

1. Carrier violated the Clerks' Agreement by failing and refusing to properly compensate Clerk D. Loya for work performed on May 30, 1968.
2. Mr. D. Loya be paid an additional six (6) hours at the rate of time and one-half.

**EMPLOYEES' STATEMENT OF FACTS:** 1. Clerk D. Loya is assigned to the position of Janitor-Caller (022), Harlingen, Texas, with assigned rest days being Sunday and Monday of each work week.

Harlingen, Texas is located on Carrier's Kingsville Division, in Seniority District No. 26.

2. Clerk Loya performed service for the Carrier on three (3) consecutive holidays as follows:

- A. February 22, 1968, Washington's Birthday, he performed service for eight (8) hours and was allowed eight (8) hours' pay at punitive rate.
- B. May 30, 1968, Decoration Day, he performed service for two (2) hours and was allowed two (2) hours' pay at punitive rate.
- C. July 4, 1968, Independence Day, he performed service for two (2) hours and was allowed two (2) hours' pay at punitive rate.

3. Clerk Loya having performed service for the Carrier on three (3) consecutive holidays, turned in time claims, claiming six (6) hours additional pay at punitive rate each day May 30, 1968 and July 4, 1968. The time claims were presented in writing to Carrier's Superintendent Mr. R. H. Blassingame according to Carrier's instructions of July 25, 1963. (Employees' Exhibits Nos.

handle with the General Manager in the usual manner. In view of this fact, the claim is invalid.

For the reasons expressed above, we cannot change the decision given you in our letter dated February 13, 1969 declining the claim.

Yours truly,

/s/ O. B. Sayers"

**OPINION OF BOARD:** Claimant is making claim herein for additional pay for working on May 30, 1968, a holiday, on the basis that he was called to work three holidays in a row.

On the property Claimant put in a claim to the Carrier's Superintendent for said pay and on July 30, 1968 said Superintendent replied as follows:

"This refers to your time slip for 6 hours each May 30 and July 4, 1968, at punitive rate account having worked three consecutive holidays.

Your claim will be allowed."

Thereafter, Carrier's Manager of Disbursements Accounting, R. H. Stallings, advised Claimant by letter dated August 7, 1968 that inasmuch as Claimant performed no service on January 1, 1968, additional time claimed for May 30 was not allowed. Claimant was paid the 6 hours for working July 4, 1968.

Carrier raises a procedural defect in that Claimant did not progress the claim through the proper channels on the property prior to the Organization's submission of the dispute to this Board. Carrier contends that Claimant filed a time slip for the additional pay, as distinguished from a time claim, with Carrier's Superintendent. Carrier further contends that filing of the time slip, erroneously allowed by the Superintendent, did not relieve Claimant of the requirement of initiating a time claim with Carrier's Superintendent after he had been informed by Carrier's Manager of Disbursement Accounting that pay for May 30 was erroneously approved by Carrier's said Superintendent.

The Organization's position is that Claimant filed his own time claim with said Superintendent as he is empowered to do under Rule 29 of the Agreement; that Carrier's Manager of Disbursements, who has never been included in the channels of processing claims, or authorized to handle same, declined to pay the claim for May 30, 1968; that the Organization had no reason to handle the claim with the General Manager for it had no decision to appeal since the claim had been allowed by the Superintendent.

We agree with the contention of Carrier in this regard. The "time slip" originally submitted by Claimant to the Superintendent did not amount to a "time claim" within the intent and meaning of Rule 29 of the Agreement, and that Claimant should have filed a "time claim" with the Superintendent after being advised by Carrier's Manager of Disbursement Accounting that his "time slip" was not allowed for May 30, 1968 because of his alleged failure to have worked three consecutive holidays. Having failed to have filed a "time claim" with the Superintendent within the time limits specified in the Agreement, we must dismiss this 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 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 not violated.

#### **AWARD**

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December 1970.

#### **LABOR MEMBER'S DISSENT TO AWARD 18359 (DOCKET CL-18609) (Referee Dugan)**

It is improbable that a determination will ever be made to ascertain what reasoning was employed by the Referee and the Carrier Members in reaching the conclusion that "The 'time slip' originally submitted by Claimant to the Superintendent did not amount to a 'time claim' within the intent and meaning of Rule 29 of the Agreement \* \* \*" The facts of record that

(1) Claimant wrote "Time Claim" on each time slip (evidenced in the Record as Employees' Exhibit No. 2);

(2) Superintendent acknowledged receipt thereof (Employees' Exhibit No. 3) advising Claimant: "Your claim will be allowed;" and

(3) The Referee and Carrier Members agreed in the Award that: "On the property Claimant put in a claim to the Carrier's Superintendent for said pay \* \* \*"

The following question was posed by Referee Stack in Award 12391 as a precedent which should have been applied in this dispute:

"Does the filling out and filing of time slips on behalf of employees in his crew by the Foreman of the Claimant employees constitute a claim within the meaning of Article V of the applicable agreement (relating to time limits for processing claims)?"

We hold yes.

\* \* \* \* \*

We are of the opinion that the time slip was the claim and the reply denied it. The claim (time slip) was in writing, on behalf (by foreman who is covered by the applicable agreement) of the employes involved to the officer of the Carrier authorized to receive the same.

Aside from complying with the language of the rule, this result is better calculated to speed the processing of claims and reduce some of the work incident to processing of the claims."

In this dispute, the proper procedure was followed, i.e., the claim was presented by the employe in his own behalf to the Carrier officer designated to receive it; he, upon whom such responsibility fell, advised the employe that he was allowing the claim. A Carrier Officer of higher rank, in no way whatever involved in the appeal procedure established by Carrier, usurped the Superintendent's authority and refused to effect payment of the claim. Such an act was intolerable and most certainly in bad faith; further, it is not an issue of first impression before the Board, and I refer to Award 17822 wherein Referee Devine stated:

"The record before us first poses the question of whether a Carrier decision, allowing a claim at the first stage of handling, which is accepted by the employes, may properly be countermanded or reversed by a higher officer.

The grievance machinery contemplates responsible consideration of claims and grievances by officials and representatives designated by the parties. Time limits are provided for each step, and these time limits are strictly enforced.

Carrier designated its Superintendent as the person to whom all claims and grievances must be presented. He must make a decision within the stipulated time which, if not acceptable to the employes, must be rejected as provided. This Board has held that failure of the employes to appeal to an officer designated by the Carrier is a fatal mistake. Award 16548.

Under such procedures it would be strange indeed to find that the decision of one officer designated by the Carrier could properly be countermanded or reversed by another. The superintendent's decision to allow the claim \* \* \* amounted to an enforceable agreement disposing of the claim, and was binding on the Carrier."

Awards in the nature of Award 18359 cause chaos which is, to say the least, not the purpose for which this Board exists. It represents a dangerous trend for the gradual and piece-meal substitution of a code of Board-made rules for the clearly-expressed provisions of the negotiated agreements of the parties. Putting it still another way: winking both eyes is easier than to think.

I dissent to this palpably erroneous award.

C. E. Kief  
C. E. Kief, Labor Member  
1/15/71

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