

Award No. 18371
Docket No. TE-18631

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Chicago, Rock Island and Pacific Railroad, TC-5704, that:

1. Carrier violated the Agreement between the parties when, on various dates during November and December, 1967, and January and February, 1968, it required and/or permitted employees not covered thereby to use the telephone at Allerton, Iowa for the purpose of handling messages.

2. Carrier shall, as a result, compensate R. D. Rector, Agent-Telegrapher, Allerton, Iowa, a two hour call payment for each occurrence.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective August 1, 1967, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

Claim was timely presented, progressed, including conference with highest officer designated by Carrier to receive appeals, and remains declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

The claim arose when on dates during months of November and December, 1967, and January and February, 1968, the Carrier required and/or permitted Section Foremen and Signal Maintainers to use the telephone at Allerton, Iowa at times when the Agent-Telegrapher was not on duty, either prior to his assigned starting time or during lunch period, to copy and receive train line up messages from the train dispatcher.

Originally handled as four separate claims covering dates from November 27, 1967 through February 5, 1968, they were collectively denied by the highest Carrier Officer to whom appealed and thereafter treated as one dispute.

Copy of the Carrier's final declination is attached, marked Carrier's Exhibit D.

The Letter Agreement of February 17, 1966, upon which the Carrier relies, is attached, marked Carrier's Exhibit D-1.

The amendment to that Letter Agreement, under date of May 31, 1966, is attached, marked Carrier's Exhibit D-2.

The General Chairman's acknowledgment of the amendment of May 31, 1966, is attached, marked Carrier's Exhibit D-3.

The Petitioning Organization, being unable to accept the Carrier's decision on the property, filed a Notice of Intent with the Third Division of the National Railroad Adjustment Board, resulting in the dispute now pending adjudication.

All rules and agreement provisions pertaining to this dispute are contained in the Agreement between the Chicago, Rock Island and Pacific Railroad Company and the Employees represented by the Order of Railroad Telegraphers in effect August 1, 1947, copy of which is on file with your Board and by reference thereto is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset we are confronted by a contention from the Carrier that the claim must be dismissed for procedural error alleged to have been committed by the Employees.

The claim, submitted in series by the District Chairman, was initially filed with Carrier's Chief Dispatcher, C. W. Guenther. Mr. Guenther, in accordance with usual procedure, delivered the series of claims to Superintendent C. R. Hurt, who declined them on the merits. Appeal was then taken to Carrier's highest officer designated to handle such matters, which is the usual procedure.

That officer, however, among other things, contended that the claims had not been initially filed with the proper officer, and were thus barred by operation of the applicable time limit rule, Article V of the August 21, 1954 Agreement.

The record shows very clearly that while the location involved was formerly within the territory assigned to Chief Dispatcher Guenther it had been reassigned to another Chief Dispatcher and that the Employees had been properly so notified. The Employees acknowledge the Carrier's right to make such changes, provided they are given proper notice.

The Employees resist the Carrier's contention on a number of grounds, the most notable being an argument that by accepting and acting on the claims on their merits at the local level, without raising any procedural question, Carrier waived the requirement it now seeks to assert. They cite a number of awards in support of this argument.

The argument is logically based, and the supporting awards were valid at the time they were rendered. However, the parties to the Agreement in-

volved, the August 21, 1954 Agreement, have effected what amounts to an agreement negating those awards and the position of the Employees.

The National Disputes Committee, established by agreement between representatives of the parties for the purpose of interpreting certain national agreement provisions, including that here involved, has rendered a number of decisions affecting the question at issue here. In its Decision No. 5 this Committee held that:

"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 handling on the property."

That Decision has been uniformly adhered to in Awards of the Third Division. Examples, in cases somewhat similar to the instant one, are Awards 14608, 15334, and 17353.

Accordingly, and without reaching any other issue, we must find that the claim here asserted is barred because of Employees' failure to present it to the officer of the Carrier authorized to receive same; and that it must, therefore, be dismissed.

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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.