

Award No. 18538
Docket No. CL-18815

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6816) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly Section 8 of the Sick Pay Allowance Agreement dated February 23, 1968, Agreement No. 47, Rules 4-C-1, 4-A-7, 9-A-1 and 9-A-2, among others when this Carrier ordered Store Attendants S. F. Piwowski and E. M. Brzuszewski under protest, to perform the duties of laborer positions effective May 29, 1969.

2. The Carrier shall pay Store Attendants S. F. Piwowski and E. M. Brzuszewski, additionally at the pro rata rate of pay (8 hours) for all time they were withheld from their own regular position and work, effective May 29, 1969 and for each day thereafter until the violations are corrected.

3. The Carrier violated Rule 4-D-1 of the Clerks' Agreement and Article V, of the National Agreement dated August 21, 1954, when it failed to render the reason for disallowance within the sixty (60) day time limit period in claim.

4. The Carrier again violated Rule 4-D-1 of the Clerks' Agreement and Article V, of the National Agreement dated August 21, 1954, when the highest officer of the Carrier failed to deny or render reason for disallowance of Appeal within the 60 day period.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and a revised Agreement effective January 1, 1965, which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, as amended, and also with the National Railroad Adjustment Board, covering clerical, other office, station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this statement of facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

4. The Director of Personnel will meet monthly with the General Chairman for the purpose of disposing, if possible, of matters coming within the purview of this Agreement which have been listed, at least ten (10) days in advance, for discussion at such meeting by either party.

5. In addition to 'disputes growing out of grievances or out of the interpretation or application of the Rules and Working Conditions Agreement', other questions may be presented and handled in the manner prescribed above, at the monthly meetings.

6. This Memorandum shall become effective April 1, 1954, and shall remain in full force and effect until changed or terminated as provided in the Railway Labor Act, as amended."

(Exhibits not reproduced.)

OPINION OF BOARD: Quite apart from the merits, Petitioner seeks allowance of this claim by reason of provisions of Article V of the August 21, 1954 National Agreement and Rule 4-D-1 of the Clerks' Agreement, which is identical to Article V of the National Agreement. Rule 4-D-1 reads, in pertinent parts, as follows:

"Should any such claim or grievance be disallowed, the Carrier shall within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance; if not so notified, the claim or grievance shall be allowed as presented . . ."

Petitioner contends that although the claim was timely presented to Carrier's Chief Maintenance of Way Officer, the latter failed to state the reason for disallowance of the claim within the 60 day time limit required by Rule 4-D-1.

The record shows that Petitioner filed its claim on July 14, 1969 and that on July 18, 1969, Carrier's Assistant Chief Maintenance Officer denied the claim without giving any reason for such denial. On September 16, 1969, Petitioner demanded payment in full on account Carrier violated Rule 4-D-1.

Carrier avers that once Petitioner invoked the terms of Memorandum of Understanding No. 4 in its July 14 letter, the time limits of Rule 4-D-1 were stayed until such time as the requirements of Memorandum of Understanding No. 4 were fully met, which did not occur until October 26, 1969, when the parties exchanged "Statements of Facts" required by Memorandum of Understanding No. 4. Carrier bases this contention on the assumption that Memorandum of Understanding No. 4 supersedes all other Agreements, including Rule 4-D-1 and Article V of the National Agreement, relative to the handling of disputes.

Petitioner denies that the time limits of Rule 4-D-1 were stayed pending compliance with the provisions of Memorandum of Understanding No. 4, relying inter alia on the fact that the parties were signatories to the August 21, 1954 Agreement which became effective after the effective date of Memorandum of Understanding No. 4, ergo, this Agreement superseded Memorandum of Understanding No. 4.

Memorandum of Understanding No. 4 (hereinafter called the Memorandum) reads, in pertinent part, as follows:

"1. This Memorandum of Understanding shall supersede all prior agreements with regard to the usual manner of handling disputes growing out of grievances or out of the interpretation or application of Agreements concerning rules, rates of pay and working conditions.

* * * * *

3. Upon written request from the Local Chairman involved, the affected department head will arrange a meeting within ten (10) days from the date of receipt of the request to discuss the matters docketed by the Local Chairman. However, it is understood that no department head will hold more than one such meeting in a calendar month. If settlement is not reached at meeting, a Joint Statement of Facts shall be prepared. In the event a Joint Statement of Facts cannot be agreed to, separate statements shall be submitted, in writing, to the Director of Personnel and the General Chairman, and exchanged not later than forty-five (45) days from date of the meeting.

4. The Director of Personnel will meet monthly with the General Chairman for the purpose of disposing, if possible, of matters coming within the purview of this Agreement which have been listed, at least ten (10) days in advance, for discussion at such meeting by either party."

We cannot agree with Carrier that when Petitioner invoked the Memorandum, this stayed the time limits of Rule 4-D-1 and Article V of the National Agreement. Article V of the Agreement was agreed to for the purpose of expediting the progressing of claims or grievances. With that in mind, the time limitations were provided for. Since Carrier was a signatory to this Agreement it must be presumed that it fully understood the provisions thereof. And since the Memorandum had been agreed upon less than five months earlier, Carrier certainly must have been aware of its terms.

If Carrier had intended the Memorandum to be the exclusive method for handling claims or grievances, it could easily have done so at the bargaining table. This it failed to do, and it is axiomatic that this Board is without authority to add to the terms of the collective bargaining agreement.

This is not to say that Rule 4-D-1 precludes the application of the Memorandum. They should be read together. The Memorandum provides the machinery for settling disputes, while Rule 4-D-1 states the time limits within which the disputes must be handled. When the Petitioner invoked the Memorandum, both parties were bound to comply with its terms. However, they were required to do so within the time limits of Rule 4-D-1 and Article V. Carrier failed to state the reason for disallowance of the claim within the 60 day period imposed by Rule 4-D-1 and this violated the Agreement. Consequently, we must sustain the claim.

It is with considerable reluctance that the Board is obliged to sustain the claim because of the procedural defect. The interests of both parties would have been better served if this case could have been considered on

the merits. The Board, however, has no alternative. The parties are signatories to an agreement which provides for procedural time limitations. Carrier has violated this Agreement.

There is no purpose for the Board to rule on other procedural questions raised by the parties or to consider the merits.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

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