

Award No. 18599

Docket No. SG-19116

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, 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:

(a) That the Carrier has violated Rules 4, 7, and 10 of the Agreement between the parties effective April 1, 1962.

(b) That the Carrier now pay Signalman R. E. Smith and Assistant Signalman D. E. Bringard for dates June 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, and 30; Assistant Signalman D. K. Bennett for dates June 16, 18, 19, 20, 23, 24, 25, 26, 27, and 30; and Assistant Signalman T. Taylor for dates June 18, 19, 20, 23, 24, 25, 26, 27, and 30 four (4) hours and thirty (30) minutes each at their respective overtime rates for each day specified.

(c) That, inasmuch as the Carrier failed to notify Local Chairman B. E. Price within 60 days of his appeal of August 27, 1969, of any reason for its disallowance of the claim, the claim shall now be allowed as presented.

[Carrier's File: A-10425]

EMPLOYEES' STATEMENT OF FACTS: Under date of July 2, 1969, the Organization's Local Chairman initiated a claim on behalf of Claimants Smith, Bringard, Bennett, and Taylor for additional compensation on the basis Carrier violated Rules 4, 7 and 10 of the current Signalmen's Agreement, which has an effective date of April 1, 1962. However, the claim was handled to a conclusion on the property, and is being presented to this Board on a procedural issue cited in paragraph (c) of the Statement of Claim — Carrier's failure to notify the Local Chairman within 60 days of his appeal of August 27, 1969, of any reason for its disallowance. This involves Rule 41(a) of the Signalmen's Agreement, which was cited on the property and which is quoted here for ready reference:

"RULE 41. TIME LIMITS — CLAIMS OR GRIEVANCES.

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the carrier

Signal Supervisor L. J. Memmott by Local Chairman B. E. Price with his letter dated July 2, 1969, copy attached as Carrier's Exhibit A.

Signal Supervisor Memmott declined the claim to Local Chairman Price with his letter of July 30, 1969, copy attached as Carrier's Exhibit B.

Under date of August 26, 1969, Local Chairman Price advised Signal Supervisor Memmott that his decision was unacceptable and that the claim would be considered for appeal.

Local Chairman Price's letter of August 27, 1969, allegedly appealing the claim was forwarded by certified mail, return receipt requested, as evidenced by Carrier's Exhibits D and D-1. It will be noted that this letter was not received by Division Engineer Burns and was returned to the sender bearing postal notation "NRLN" (no response — left notice).

No further effort was made by the Local Chairman to contact or communicate with Division Engineer Burns as to the possible mishandling of the letter.

The first information officers of the Carrier other than the signal supervisor had of the incident was when on October 27th General Chairman Wollbrinck personally delivered his letter dated October 29, 1969, to Chief Engineer Brown, alleging a violation of Rule 41 (a) of the Schedule Agreement on the basis of his assertion that the claim was not denied within the applicable time limits. Copy of General Chairman Wollbrinck's letter attached as Carrier's Exhibit E.

Under date of December 10, 1969, Chief Engineer Brown after making a comprehensive investigation of the facts surrounding the handling of the claim, replied to General Chairman Parsons, copy attached as Carrier's Exhibit F.

Under date of January 26, 1970, Chief Engineer Brown by letter confirmed conference with the Organization on the subject matter, which was held on January 20, 1970. Copy attached as Carrier's Exhibit G.

Further correspondence was exchanged as evidenced by General Chairman Parson's letter of February 21, 1970, copy attached as Carrier's Exhibit H, and Chief Engineer Brown's letter of August 17, 1970, copy attached as Carrier's Exhibit I.

The apparent irregularities involved in the handling of the claim were fully discussed in conferences held between the Carrier's Chief Engineer and the General Chairman of the Organization and the Carrier's position with respect to the obvious attempt on the part of the Organization's Local and General Chairman to evade the orderly process for handling disputes, established within the framework of Rule 41 of the Schedule Agreement, was the sole basis for declining the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 2, 1969 the Organization's Local Chairman presented a claim alleging a violation of Rules 4, 7 and 10 of the Agreement. Following receipt of Carrier's letter of July 30, 1969, rejecting

the claim violations, the Local Chairman advised Carrier's Signal Supervisor that the claims would be presented to the Division Engineer.

The Agreement, in Rule 41 (a) and (b), states:

"Rule 41. Time Limits — Claims or Grievances. (a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. 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 employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the carrier designated for that purpose."

The Local Chairman, under general instructions from the General Chairman, mailed his notice of appeal by certified mail, return receipt requested. Delivery was attempted by the mail carrier on August 29, 1969 but was not completed. A notice was left on that date, and again on September 3, 1969. As is customary in such situations the Post Office returned the letter to Local Chairman. It was actually received by the Local Chairman on September 18, 1969.

Taking the position that notice of appeal had been given to the Carrier, and that the Carrier had failed to provide notice in writing of its reasons for disallowance, the General Chairman advised Carrier's Chief Engineer on October 29, 1969 that the Organization's position was that Carrier must now allow the claim because of Carrier's failure to notify the Organization of its reasons for disallowing the appeal.

The initial inquiry must be whether the Local Chairman's certified letter of August 27, 1969 met the requirements of Rule 41 (b) for an appeal. If it did not then the subsequent failure of the Carrier to provide notice of its reasons for declining the claim cannot, in any event, work a forfeiture.

At the outset it should be noted that the inquiry on this point differs from those cases dealing with the question of whether the date of mailing or date of receipt of a notice is to be considered the applicable date for applying limitations. Here there was no receipt by the Carrier of a notice

of appeal. Carrier did receive a notice from the Post Office Department that a certified letter had been addressed to it. However, such a notice does not constitute notice of appeal as required by Rule 41.

Under the facts of this case neither party is in default under the time limits of Rule 41. The Organization mailed notice of appeal in a timely manner. The notice was not delivered by the Post Office and consequently the Carrier was without knowledge of it and unable to comply with Rule 41. Therefore the claim will be remanded to the parties so that it may be considered on its 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 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 not violated, as to part (c) of the claim.

AWARD

Claim remanded to the property, as discussed in Opinion, as to (a) and (b).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.