

 Award No. 18937
Docket No. CL-19172

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6908) that:

1) Carrier violated the current Clerks' Agreement effective September 15, 1957, when it failed to deny claim within the sixty (60) day period provided therein and because of such violation shall now be required to pay the following claims as presented:

2) Mr. Peter J. Bowie, Clerk-Timekeeper in the Bridge and Building Department be paid \$20.09 per day commencing July 21, 1969, to June 22, 1970, inclusive.

3) Mr. Peter J. Bowie shall also be paid the amount of \$40.18 representing eight hours pay at the time and one half rate of his regular assignment Clerk-Timekeeper for Friday, August 22, 1969, his Birthday Holiday.

EMPLOYEES' STATEMENT OF FACTS: September 5, 1969, the Brotherhood filed claim with the Carrier because of violation of the Clerks' Agreement effective September 15, 1957, as amended and revised, particularly the "Spare Work and Work on Holidays" Rule. (See Exhibit A)

September 17, 1969, the Brotherhood filed claim with the Carrier because of violations of our Agreement Rules 1, 2, 3, 14, 37, 39 and 45. (See Exhibit B)

September 10, 1969, Carrier rendered a decision in the Spare Work and Work Holiday violation. (See Exhibit C)

September 24, 1969, Carrier rendered a decision in the filing of our September 17 claim. (See Exhibit D)

September 27, 1969, the Brotherhood appealed the Birthday Holiday claim. (See Exhibit E)

October 3, 1969, Carrier acknowledged receipt of appeal. (See Exhibit F)

October 6, 1969, the Brotherhood sent Carrier their reply. (See Exhibit G)

Copy of Agreement between the parties dated September 15, 1957, as amended, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This controversy involves the issue of whether, as the Organization contends, Carrier defaulted in the handling of the herein claims by failing to act upon the claims within the time limits of the applicable rule in the Agreement, Rule 21. The rule in relevant part reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the company authorized to receive same, within sixty (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 Company shall, within sixty (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, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances."

Or whether, as Carrier contends, the Petitioner defaulted by, in effect, bypassing a step in the grievance procedure.

Under date of April 10, 1968 Carrier sent the Organization a revised departmental listing showing the avenue of appeals applicable to this case as follows:

Maintenance of Way Department
Bridge and Building Department
B & B Supervisor
Engineer, Maintenance of Way
Chief Engineer"

The appeal procedure as set forth above was in effect when the herein claims were filed. In this connection on September 4, 1969 the Superintendent, Labor Relations and Personnel wrote to the Organization's General Chairman advising him of certain changes in the grievance procedure not relevant here and stated further: "Other than this, you have also been advised that until further notice the avenue of appeals will remain as they were prior to inclusion of the New Haven in the merger." The first claim was filed on September 5, 1969.

In the processing of the claims the Organization followed the established procedure when on September 5 and September 17, 1969 it filed claims on behalf of the employe with the B & B Supervisor. These claims were denied on September 10 and September 24, 1969 respectively by the B & B Supervisor. Thereafter, the Organization on September 27, 1969 filed its appeal to the denial by the B & B Supervisor with the Engineer, Maintenance of Way. This claim, which involved Birthday-Holiday pay, now received the attention of the Division Engineer in Boston who, on October 3, 1969, advised the Division Chairman that his letter of September 27, 1969 had been received by him and he suggested that a meeting be held on October 10, 1969. The Division Chairman responded on October 6, 1969 stating among other things

that he would be glad to meet and discuss the matter. Although the Division Chairman was in Boston at the appointed time, the Division Engineer was out of town and the meeting was never held. Why a new appointment was not made is not clear. It is clear, however, that at no time did the Division Engineer ever deny the claim, assuming that he was now the second step in the grievance procedure. The record reveals the statement in his letter that he had jurisdiction over the matter. There is nothing in the record to show that the organization was formally notified of this change.

The Organization's appeal dated October 8, 1969 to the Engineer, Maintenance of Way on the second claim concerning re-assignment of work or other classes, elicited a reply from the Engineer, Maintenance of Way dated October 14, 1969 in which he stated he was no longer Engineer, Maintenance of Way and that he had for 9 months been Division Engineer on the New Haven Division, a Division other than the one involved herein. The record is not clear why he did not pass the letter on to the Division Engineer in Boston as happened with the letter of September 27, 1969. He merely suggested that the Division Chairman contact him.

In any case the Division Chairman on October 30, 1969, in separate letters, appealed both claims to the Chief Engineer, the next official designated to receive appeals. He stated his belief that the second step had been eliminated and there was some question concerning the avenue of appeals as his reason for appealing directly to the Chief Engineer. That official did nothing to allay the Organization's fears in this regard. The record reveals that no response was ever received from the Chief Engineer. The Organization received no response until June 22, 1970 following appeals from the General Chairman on January 22, 1970 to the Chief Engineer and April 23, 1970 to the Superintendent, Labor Relations and Personnel. In the letter of June 22, 1970 the Superintendent, Labor Relations and Personnel denied both claims because of alleged procedural defects in the handling of the claims by the Organization. Among the reasons stated by the Superintendent, Labor Relations and Personnel are the Division Chairman's failure to take the matter up with the Division Engineer at Boston as suggested by the Engineer, Maintenance of Way and the filing of his appeals with the Chief Engineer. The Superintendent, Labor Relations and Personnel concludes "His failure to have done so constitutes a precedential defect to that on the part of the Chief Regional Engineer and on that basis the claims in both Docket 11570 and 11571 are hereby denied."

The cases are clear. NDC Decision 15 holds in relevant part that where either party has clearly failed to comply with the time limits the case should be disposed of at the stage of handling in which such failure becomes apparent. If the Carrier has defaulted, the decision holds, the claim should be allowed as presented and if the Organization defaults the claim should be withdrawn. Other cases hold similarly.

There was to be sure confusion attendant upon the merger. The record clearly reveals that the Organization was aware of that fact as its many letters to the Carrier in the record concerning revision of the avenue of appeals will attest. It received assurance from the Carrier as a result of these letters that as soon as the revisions were ready they would be formally advised and that in the meantime grievances should be handled in accordance with the established procedure.

This Board finds that the Organization had the right to be somewhat baffled by the handling of its appeals at the second step. In one case its letter of September 27, 1969 to the Engineer, Maintenance of Way is answered

by the Division Engineer in Boston, who contrary to the assurances received by the Organization that they would be advised of any changes, designates himself as the second step. Such designation in the fact of the assurances given the Organization by the Carrier that it would be formally notified when revisions were made, this Board finds, is not binding on the Organization. In the other case its letter of October 8, 1969 to the Engineer, Maintenance of Way is answered by him and he advises that he has not held that position for nine months. This Board finds that the Carrier, despite the upset caused by the merger, had sufficient time to advise the Organization of such vital changes in the grievance procedure and its failure to do so was violative of the agreement.

Note is taken of the fact that in the letter of June 22, 1970 denying both claims Superintendent Labor Relations and Personnel does not explain why the Division Engineer in Boston did not rule on the claim involving Birthday-Holiday pay which Carrier has designated as Docket 11570. It is clear he knew of the Claim but the record is silent as to any action he took beyond his letter of October 3, 1969.

Under all the circumstances this Board finds that the Organization followed the established avenue of appeals procedure and did not default by appealing the claims to the Chief Engineer by letter of October 30, 1969. This Board finds that the Organization in vindication of the rights of its members was justified in concluding that changes in the procedure had been made without its knowledge and to conclude under all circumstances that the second step had been eliminated.

The record is clear that Carrier did not act on the claims within the time limits of Rule 21. This Board finds that by so doing the Carrier violated the agreement. Accordingly, without considering the merits of the claims, the claims will be sustained.

The record reveals that the Claimant resigned on February 27, 1970. Nothing this opinion is to be construed as requiring Carrier to pay Claimant beyond that date.

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 to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1972.

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