



Award No. 19074
Docket No. SG-19229

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 25(a), when it did not furnish free transportation to Signalmen J. L. Kreye, R. L. Riester and R. C. Larsen; and Leading Signalmen F. X. Marien, for week-end trips home during April 1969.

(b) Carrier further violated the agreement, particularly Section 1 (a) of Article V of the August 21, 1954 Agreement, when the Signal Supervisor did not give written reasons for denying mileage allowance claims (9¢ per mile) submitted for various dates in April 1969 on behalf of these four men.

(c) Carrier should now be required to allow mileage allowance claims as presented: Kreye — \$92.60; Riester — \$93.60; Larsen — \$46.80; Marien — \$91.64.

(Carrier's File: Case F-1061.)

EMPLOYEES' STATEMENT OF FACTS: At the time this claim arose, Claimants were working on a gang away from home, and could go home only on weekends. Such weekend trips are subject to Rule 25(a) of the current Signalmen's Agreement, which reads:

"When the majority of the employees in a crew elect, and conditions permit, they may make week-end trips to their homes. Assigned time lost account making such trips will not be paid for; however, men may make up such lost time either before or after making such trips, outside of regular hours of assignment as directed by the Management at regular rate. When such trips are made, free transportation will be furnished."

On Sunday, April 13, 1969, Carrier's passenger train service was curtailed because of a Mississippi River flood. Even though the last sentence of Rule

auto in traveling from one work point to another. Said award, however, does not have any application in the instant dispute because the claimants in the instant case were neither authorized to use their auto nor were they required to move from one work point to another on the dates the auto mileage allowance was claimed. Furthermore, neither the claimants nor their Organization has made claim for the mileage allowance under the provisions of Award No. 298 and properly so, because as stated, said award is not applicable and we are quite sure the Organization will agree.

As a matter of record, no claim for the reimbursement of the cost of transportation used in making weekend trips home, i.e., claim for auto mileage allowance in the instant case, has ever been submitted by any employe within the scope of the Signalmen's Agreement prior to the filing of the instant claim.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. L. W. Harrington, Vice President-Labor relations, to Mr. L. T. Davies, General Chairman, under date of February 19, 1970Carriers' Exhibit "A"

Letter written by Mr. Harrington to Mr. Davies under date of April 28, 1970.....Carrier's Exhibit "B"

Letter written by Mr. Harrington to Mr. Davies under date of May 27, 1970.....Carrier's Exhibit "C"

(Exhibits not reproduced.)

OPINION OF BOARD: In April, 1969, Claimants were working on a gang away from home, and thus could go home only on weekends. During this month Carrier's passenger train service was curtailed due to a flood, so Claimants furnished their own transportation home at their own expense. They submitted individual personal expense accounts to cover these weekend trips home, alleging that Rule 25(a) required Carrier to furnish free transportation therefore. The expense forms were declined by Carrier's Signal Engineer on May 16, 1969. On July 5, 1969, the Local Chairman submitted a claim for allowance of Claimants travel expenses which claim was denied.

Both the Organization and the Carrier raise procedural questions which must be resolved before we can reach the merits of the claim. Carrier contends that the claim is barred since it was not filed within 60 days of Carrier's failure to furnish transportation in April 1969, while the Organization contends that the claim must be allowed as presented since Carrier Supervisor Wellenstein denied the claim without giving any reason therefore as required by Article V of the August 21, 1954 Agreement.

We cannot agree with Carrier's contention that the claim was not timely filed. The dispute arose when Carrier refused to compensate Claimants for the transportation they hand arranged and paid for themselves. When they were first notified of Carrier's refusal to so compensate them for their expenses by letter of Carrier's Signal Engineer under date of May 16, 1969, this is when the claim first arose. Thus the Local Chairman's claim of July 5, 1969 constituted a properly initiated claim timely filed.

Article V of the August 21, 1954 Agreement is clear and unambiguous. If any claim or grievance be disallowed, Carrier must, within 60 days from the

date same is filed, notify whoever filed the claim in writing of the reasons for such disallowance. If not so notified, the claim or grievance is to be allowed as presented.

While we are reluctant to reach a decision on the basis of procedural defects rather than on the merits of a claim, it cannot be controverted that Article V is an integral part of the Agreement, whose requirements are mandatory. The parties have written such requirements into the contract, and this Board has no choice but to apply them as written. Carrier Supervisor Wellenstein, under date of August 25, 1969, declined payment of the claim without stating any reason for said disallowance as is required by Section 1(a) of Article V of the Agreement. In view of this, we have no alternative but to allow the claim as presented, and Carrier's failure to comply with the provisions of the Agreement precludes further discussion of the case 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 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 10th day of March 1972.