

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19361
Docket Number CL-19321

Arthur W. Devine, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-6938)
that:

(a) Carrier violated the Agreement between the parties effective May 1, 1955, as revised, when, in abolishing position of Clerk and Relief Mail Clerk in the F. F. Department, January 28, 1969, it required and/or permitted occupants of "P" Position and others not covered by the Agreement to absorb the work of the "abolished" position which remained to be performed; and,

(b) Because of such violation Carrier shall now be required to pay the senior qualified furloughed clerk on the extra list; H. Cebula or, if working, T. J. Bowen or, if working, Mary Antas (senior qualified furloughed clerk to be determined by check of payroll), eight (8) hours each work day, commencing January 29, 1969 and continuing each work day thereafter until the violation is corrected; and,

(c) Carrier violated Rule 33, Section 1 (a) when it failed to timely deny the claim filed March 8, 1969 (Employees Exhibit No. 3, Claims (a) and (b) above) by District Chairman Criger, and, July 7, by General Chairman Baier; and,

(d) Because of such violation Carrier shall now, as per the mandate in Rule 33-1(a), be required to allow the claim as presented.

OPINION OF BOARD: On March 8, 1969 Petitioner initiated a grievance alleging violation of the May 1, 1955 Agreement when the position of Clerk and Relief Mail Clerk was abolished effective January 28, 1969 and the occupants of "P" positions and others not covered by the Clerks' Agreement absorbed the work of the abolished position. On June 2, 1969 Petitioner traced for an answer and pointed out that Carrier was out of time and the claim stood to be paid under Rule 33, the Time Limits Rule, (Article V, August 21, 1954 National Agreement). On August 13, 1969 Carrier issued a belated denial of the claim giving two reasons - one of them being that the March 8 and June 2, 1969 letters did not establish proper claims - the other a denial on the merits of the claim.

Carrier defends before this Board on both the Time Limit issue and the Merits. Even if we are to accept as fact Carrier's contention that the March 8, 1969 letter is too vague and indefinite to meet the requirements of a claim or grievance under the provisions of Article V of the August 21, 1954 Agreement, Carrier is not relieved of its obligation to make a timely denial as required by the Agreement.

Second Division Award 3637 has been cited with favor by several Referees of this Division. That Award held:

"However, the carrier's error is in assuming that Article V of the August 21, 1954 Agreement contemplated that it could prejudge the issues presented to it as claims or grievances and refuse to answer those that it considered were not appropriate. Article V requires a denial in those instances and reasons for denying."

In Award 12472 we stated:

"***The Rules, as exemplified in Article V, requires the Carrier to respond within 60 days from the date the claim or grievance is filed by notifying the Claimant or his representative in writing, the reasons for the disallowance of such claim or grievance. This requirement is mandatory, not a matter of choice, or dependent upon the type or quality of the claim.***."

We held the same in Award 16564:

"***A Carrier may not disregard a filed claim because it, in the Carrier's opinion, is: (1) without merit; (2) is not supported by the Rules Agreement; or, (3) is not a dispute within the contemplation of the Railway Labor Act. Carrier's obligation to deny any claim filed within 60 days of filing, giving its reasons for disallowance in writing, is, by application of Rule 21, absolute. Since Carrier failed in this contractual obligation we are compelled by Rule 21, to sustain the instant claim as presented."

The Carrier also states in its submission before this Board:

"*** if it should be developed that a claim does exist, the claim would only be sustained to the date carrier's Assistant Vice President denied the alleged claim/claims on August 13, 1969.***."

In Award 14603 (Dolnick) with this Carrier, we held:

"National Disputes Committee Decision 16 held that where the claim is a continuing one, the receipt of Carrier's denial letter 'stopped the carrier's liability arising out of its failure to comply with Article V of the August 21, 1954 Agreement.' The denial letter was, for this purpose, received on May 7, 1960. Also see Awards 14502, 14369 and 11326."

Accordingly, we will sustain the claim for period January 29, 1969 to and including August 13, 1969.

Turning next to the Merits of the dispute: Petitioner alleges that when the Clerk and Relief Mail Clerk position was abolished, the following provision of the Scope Rule of the parties' Agreement was violated:

"Positions or work coming under the scope of this agreement shall not be removed and transferred to employees coming under the scope of another agreement (except in the case of reduction of clerical forces to establish a one man agency) except by mutual agreement."

A complete review of the entire record indicates that Petitioner simply made this allegation but has offered no proof whatsoever to substantiate it. There is not one word in evidence as to what work was allegedly removed and transferred to employees coming under the scope of another agreement. Accordingly, we must hold that the allegation of a violation of the scope rule is unsupported by any evidence whatsoever and must be denied.

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 to the extent indicated in the Opinion.

A W A R D

Claim (a) denied. Claim (b) sustained for the period commencing January 29, 1969 and continuing through August 13, 1969. Claim (c) sustained in accordance with the Opinion. Claim (d) sustained as limited in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.