

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19766  
Docket Number SG-19392

Robert M. O'Brien, Referee

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: {  
(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**,  
( and Willard **Wirtz**, Trustees of the Property of  
( Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: 1. Carrier failed to **comply** with the procedural requirements agreed upon by the parties with respect to application of the National Agreement dated August 21, 1954, when Supervisor **C&S D. A. Walker** failed to decline within 60 days from date claim **was** filed on behalf of **Signal Maintainer Ralph Downour**, and

2. Carrier shall now allow claim as presented; i.e.:

(a) Carrier failed to provide transportation to Signal Maintainer Ralph **Downour** either in the form of a track motor car or motor truck (highway vehicle) in accordance with Job Bulletin in which **Mr. Downour** bid on end was assigned to the Job he held on October 1, 1969, and as the result of the failure of Carrier to provide the herein-referred-to transportation **Mr. Downour was forced** under such circumstance to use his private automobile when he **was** called to perform emergency service by the Carrier on date of October 1, 1969, and when returning from performing such emergency service which was at Stanley Yards in Toledo, Ohio, and when still on Carrier property sustained damages to his private automobile on this date, and

(b) Carrier be **now** required to reimburse Signal Maintainer Ralph **Downour** in the sum of \$215.78, such being the cost of damages to his private automobile for repair of same, account failure of Carrier to provide transportation as referred to in (a) above on October 1, 1969. (Carrier's File: m-1)

OPINION OF BOARD: On October 1, 1969 while on Carrier's property and in **Carrier's** employ, claimant sustained damage to his private automobile which he **was** required to use due to Carrier's failure to provide him with **transportation**. Claim **was** filed November 24, 1969 requesting Carrier to reimburse claimant for the **cost** of repairs to the automobile. It is the Organization's position that the claim must be allowed since Carrier's Supervisor failed to render a decision on the claim within the 60 day time period prescribed in Article V of the August 21, 1954 National Agreement.

We cannot **agree** with the Organization's contention. Before **the** time **limits** of Article V become applicable, the claim **as** presented must come within the term "claims **or** grievances" upon which Article V is premised. The claim requesting compensation for damage to claimant's automobile is in the nature of **a** tort **and does** not involve the working agreement between the parties.

**The** claim does not allege **a** rule violation nor does it involve the interpretation **or** application of the Schedule Agreement. The duly established grievance procedure on this property has thus been erroneously invoked by the organization. The proper forum for adjudication of the within claim is a Court of Law and not the National Railroad Adjustment Board. Thus we are left no alternative other than **to** dismiss the claim.

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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST:

E. A. Killian  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of **May**, 1973.