NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20084
THIRD DIVISION Docket Number CL-20012

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employes
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7188) that:

(a) Carrier violated the Clerks' Agreement at Huntingburg, Indiana, when it required or allowed Roundhouse Foreman and/or General Roundhouse Foremen to fuel and sand locomotives on the rest days of Mr. Joseph J Hale, Combination Tractor Driver and Storehouse Man when he performs this work during his regular tour of duty Monday through Friday.

(b) Carrier failed to meet the requirements of Article v, section l(a) of the August 21, 1954 Agreement, since Master Mechanic Mr. C. W. Edwards did not actually decline the claim until his corrected letter of June 1, 1971, which was ninety-four days from date claim was originally filed on February 26, 1971.

(c) Claimant Hale shall be compensated for one day's pay at the rate of time and one-half for the dates January 9, 10, 16, 17, 23, 24, 30, 31, February 6, 7, 13, 14, 20, 21, March 6, 7, 13, 14, 20, 21, 27, 28, April 3, 4, 10, 11, 17, 18, 24 and 25, 1971.

OPINION OF BOARD: This is a Scope dispute in which the Brotherhood of Railway Carmen has a third party interest. The Third Division, National Railroad Adjustment Board, gave the customary Third Party Notice to that Organization, as required by Section 3 First (j) of the Railway Labor Act, but the Organization has declined to appear. Further, the Organization has stated to the Board in an August 16, 1973 letter, by President James E. Yost, that disputes involving its agreements are exclusively within the jurisdiction of the Second Division, National Railroad Adjustment Board, and that, accordingly an Award by this Division, the Third, would be void insofar as it makes a determination of a dispute between a Carrier and Employees in the crafts represented by that Organization. This kind of challenge to the Third Division's jurisdiction over the rights of a third party has been considered and rejected in prior Award No. 19949. There, we held that the Third Division had jurisdiction over the entire dispute, including jurisdiction over the non-appearing third party. For like rulings by the Second Division, see Second Division Award Nos. 5766 and 5509. See also T.C.E.U. v. Union Pacific RR Co., 38 US 157 (1966). In line with these authorities we conclude that the Organizations's challange to this Board's jurisdiction is of no effect and we shall therefore proceed to consider the case, including any rights of the third party that may be involved.

The dispute here involves two claims which were handled separately on the property. but which have been consolidated for submission to this Board. The first claim (Claim 1), covering fourteen (14) Saturdays and Sundays during the period January 9 -February 21, 1971, was filed on behalf of Claimant Joseph J. Hale on February 26, 1971 with Carrier's General Foreman at Huntingburg, Indiana. The General Foreman was the highest ranking Mechanical Department officer at that location. The claim covering the period January 9-February 21, 1971 was denied by the Carrier's Master Mechanic on May 13, 1971. The second claim (Claim 2) covers sixteen (16) Saturdays and Sundays during the period March 6-April 25, 1971, and was also filed with the General Foreman at Huntingburg, Indiana. Claim 2 was denied by Carrier's Master Mechanic on May 11, 1971.

Claim 1 is before this Board for adjudication solely on the alleged ground that the Carrier violated the Time Limit provisions of the Agreement in that a timely denial of the claim was not made. Claim 2 is before this Board for adjudication of the merits of the claim.

We shall first dispose of Claim 1. It is clear from the record that this claim was not denied within sixty (60) days as required by the applicable Time Limit rule. We find no merit in the contentions of the Carrier that the claim was not filed with the proper officer authorized to receive claims. As previously indicated, the claim was filed with the highest ranking Mechanical Department official at Huntingburg, Indiana. The record contains no showing by Carrier that it had designated any other official as the proper officer with whom claims should be filed by Mechanical Department employes at Huntingburg; consequently, we conclude that the claim was filed with the proper official. Accordingly, Claim 1, covering the fourteen (14) Saturdays and Sundays during the period January 9-February 21, 1971, shall be sustained as presented because of Carrier's failure to deny such claim within sixty (60) days of filing as required by Article V of the National Agreement of August 21, 1954.

Claim 2, covering sixteen (16) Saturdays and Sundays in the period March 6-April 25, 1971, is properly before this Board for adjudication on its merits. Here, the Petitioner essentially claims that the Work on Unassigned Days rule was violated when the work of Claimant's position was performed on his Saturday and Sunday rest days by Carrier employes outside the scope of the Clerks' Agreements. In rejecting the claim on the property the Carrier vigorously challenged the basis of the claim, asserting that Petitioner had offered no evidence to show that the disputed work was exclusively performed by Claimant during his regualr work week. Despite this strong challenge, the Petitioner gave relatively little attention to the merits of the claim and the demand for supporting evidence. The majority of the material in Petitioner's Submissions to this Board pertain to discussion and argument regarding the Time Limit issue, and counter-argument to Carrier's contentions that the claims were filed with the wrong officer. Only a small portion of the Submissions is concerned with argument on the merits of Claim 2. Indeed, although the Employes'

Ex Parte Submission consists of twenty-one (21) pages, we find only one brief paragraph dealing with the merits of Claim 2. Both on the property and in the Submissions, the Petitioner failed to submit probative evidence that the Claimant performed the disputed work exclusively during his regular work week. Moreover, there is no showing as to which of the duties of the disputed work was performed on his assigned rest days, by whom, or at what time. Thus, Claim 2 has not been validated either by evidence or by argument and we shall therefore deny the claim. See Award No. 14042 involving these same parties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Time Limit rule was violated by Carrier in regard to Claim 1.

A W A R D

Claim 1 sustained as indicated in the Opinion. Claim 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.