

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20281
Docket Number X-20016

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen **on** the Southern Pacific Transportation Company:

(a) That the Southern Pacific Transportation Company violated Section 2 of the Mediation Agreement, Case No. A-8433, dated April 21, 1969.

(b) That Mr. **J. C. Smith** be compensated for eight (8) hours at his straight-time rate of pay for July 28, 1971, (his birthday) as claimed on **Form** 201-E for 2nd. period July 1971. (Carrier's File: **SIG 162-30**)

OPINION OF BOARD: Claimant, a Signal Maintainer, was **on** vacation from July 19 through July 30, 1971; his birthday was July 28, 1971. A strike by the United Transportation Union was scheduled for July 24, 1971 and on July 23rd all Signal **employees** (including claimant) covered by the Agreement were notified that their jobs were abolished effective 6:00 A.M., July 24th. **The UTU** strike was settled on August 2, 1971 and **Claimant** was notified to report to work on Tuesday August 3, 1971 on the assignment he held prior to the strike. On his time sheet for the second period in July, Claimant put in for sixteen hours pay for July **28th**, representing eight hours vacation pay and eight hours pay for his birthday. By letter dated August 19, 1971, Carrier's Payroll and Miscellaneous **Ser-** vices Manager notified Claimant **over** the Division Superintendent's signature, that his birthday holiday pay claim was denied. By letter **dated** September 13, 1971, the Organization's Local Chairman gave notice to the Division Superintendent that Claimant's birthday pay claim was being forwarded to the General Chairman for handling. By letter dated September 21, 1971, the Organization's General Chairman appealed the claim to Carrier's Assistant Manager of Labor Relations, Carrier's highest designated officer, who denied the **Claim** by letter dated October 19, 1971.

Carrier asserts that the Claim should be barred because no timely claim was presented by the Local Chairman to the Division Superintendent **within 60 days** as provided in Rule 58; Carrier alleges that in fact the claim was never presented to the Superintendent, Carrier's authorized officer, and hence **were** not handled in the usual manner. Rule **58(a)** provides:

"Rule 58.(a) CLAIMS. All claims or grievances must be presented in writing by or on behalf of the **employee** involved, to the officer of the Carrier authorized to receive **same**, within 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 carrier shall, within 60 days from the date **same** is filed, notify whoever filed **the** claim or grievance (the **employee** 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 Carrier as to other similar claims or grievances."

With respect to the procedural issue, the Organization's position was expressed in its submission:

"There is no provision in Agreement Rule 58 which prohibits the handling of a time claim on a time roll. In fact, the only requirement set out in that Rule regarding the manner in which the claim must be presented is that it be presented in writing. This claim was so presented. Neither is there a prohibition regarding the Claimant presenting his **own** claim. In fact the Rule specifically recognizes that the presentation by the **employee** is proper. This leaves only the matter of appealing the denial. It is customary on the property that denial decisions of the **Superintendent**, if appealed, are appealed to the Assistant Manager of Labor Relations. That was done in this case, and the junior officer was advised that the appeal was being wade."

It **should be** noted that Carrier, from the first correspondence on the property, raised the procedural question which is before us. Carrier has also presented evidence as to the "usual and customary" manner of handling **claims** on this property and states that this claim, and its companion dispute, are the first instances of claim handling omitting the customary first step. Petitioner has presented no evidence substantiating its position that time claims submitted through time rolls to the timekeeping department constitute claims.

We concur in Petitioner's position that Rule **58(a)** provides only that claim be submitted in writing and that an **employee** may submit the initial claim in his own behalf. However, an examination of the record of this dispute indicates that the **cause of action** herein was the refusal by

the Superintendent to honor the time sheet request for birthday pay. The initial **pay request** obviously cannot be considered the first step of the grievance procedure as outlined in Rule 58; such **interpretation** would **mean** that any request for payment, request for an **assignment**, or even the signing of a posting, if denied, would constitute the first grievance step. This interpretation is neither supported by the Agreement, the record nor is it reasonable. We have dealt with this issue on numerous occasions; the Board's position was well stated in Award 14083:

"A claim arises within the meaning of Rule 20 when there is an indication that there has been a breach of the **Agreement**. There was no claim or grievance presented to the Carrier within the meaning of Rule 20 prior to March 19, 1963. On January 31, 1963, the Claimant had merely presented a payroll which included four days for sick leave. The breach did not occur nor did the grievance arise until the Superintendent refused to pay Claimant for two days off on account of sick leave."

We hold that this **Claim** is defective in that no grievance arose until Carrier refused to make the birthday payment: the **timeslip** did not initiate the **claim**. See Awards 18048, 18359, 16001, and 19074. We cannot deal with the merits since the claim is barred; it was not presented to the authorized officer within the 60 day time Limit provided in Rule 58.

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 is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.