

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20410
Docket Number CL-20584

William M. Edgett, Referee

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

PARTIES TO DISPUTE: (

(**The** Atchison, Topeka and Santa Fe Railway Company
(- Coast Lines -

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7507) **that:**

(1) The Carrier violated and **continues** to violate the **terms** of the (Clerks' or Telegraphers') Agreement, as amended by Public Law No. 91-541, when it refuses to pay D. P. **Pena** and others listed below the **retroactive** pay increases as required by Public Law No. 91-541.

(2) **That** Carrier shall now pay an additional **5%** (five per cent) for all compensation received for the period of January 1, 1970 to and including December 31, 1970 and an additional **32¢** (thirty-two cents) per hour for all straight time hours worked for the period **November 1, 1970** to and including December 31, 1970 and an additional **48¢** (forty-eight cents) per hour for all overtime hours worked for the period November 1, 1970 to and including December 31, 1970.

(3) **The** Carrier shall be required to pay on the total **amount** claimed **in** Item 2 above **7% (seven per cent)** as interest **commencing** January 1, **1971** and **compounded annually** until this claim **is** paid **in** full.

List of **Claimants:**

J. Loftin	L. G. Simmons	D. R. Bruce	R. McDonald
M. Evans	James Patterson	P. Leway	D. S. Condit
P. Nuanes	T. Armstrong	D. R. Walker	R. E. Evrard
R. Delette	G. T. Thacker	J. Gerbrand	A. Cassara
T. Ernst	w. Wyatt	R. T. Scoggins	F. V. Desaulniers
M. Vaughn	R. H. Lopez	T. L. Terflinger	G. L. Wolff
M. Siko	J. J. Garand	K. R. Swank III	D. S. Condit
C. R. Smith	H. Charlie	M. G. Daniels	D. E. Bnms
J. Bilkovic	R. N. Russ	S. G. Sanfratello	P. J. McCauley
R. Bergman	P. J. Ward	J. L. Huntley	C. Owens
M. Calleros	I. Carrillo	L. D. Furan	A. Hernandez
V. B. Hardgraves	E. M. Magdeleno	G. C. Rorick	F. Z. Sanchez
J. R. Herrera	H. Bigelow	L. E. Juntz	D. Kilbourn
v. Ramos	G. Wolf	G. Morgan	L. E. Webster
R. C. Bastio	D. C. Ernst	S. G. Hall	C. E. Haury
T. Johnson	M. A. Schmidt	J. J. Sosa	W. R. Sturgell
B. J. Wood			

OPINION OF BOARD: After Carrier failed to respond to the **claim** within the time limit provided in **Rule** 43 the Organization appealed the claim on the property and to this Board as a violation of that Rule, which reads:

RULE 43--TIME LIMITS ON CLAIMS AND GRIEVANCES

(From Article V of August 21, 1954 Agreement)

43-A. All claims or grievances arising on or after January 1, 1955 should be handled as follows:

(1) 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.

Carrier argues that the word claim (or grievance) does not encompass the claim which was presented and not answered by Carrier because it is based on a Joint Resolution of Congress, not the collective bargaining agreement. It is also argued that an agreement reached by the parties after the default constituted an adjustment of the claim.

Award No. 16564 disposes of Carrier's first contention. It states in pertinent part:

Rule 21 of the confronting Agreement, which is a reproduction of Section V, 1 (a) of the National **Agreement** of August 21, 1954, contractually obligates a Carrier to disallow a "claim or grievance" within 60 days of its filing, giving its reasons for disallowance in writing, under pain of allowance "as presented" if those procedural requirements are not complied with. There are no exceptions. 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 subsequent agreement of the parties on the merits of the claim, as it **may** affect others, does not make any provision for **ad-justment** of this procedural claim. The Board is **not** at Liberty to add to that agreement something which the parties did not see fit to add. It is no more at liberty to accomplish that result indirectly, in the guise of interpretation, **then** it is to do it directly. The claim **must** be sustained.

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 Carriers 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 must** be sustained.

A W A R D

Claim sustained.

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

ATTEST:

C. W. Pauls
Executive Secretary

Dated at **Chicago**, Illinois, this 27th day of September 1974.

CARRIER MEMBERS' DISSENT TO AWARD 20410, DOCKET CL-20584

(Referee Edgett)

We dissent. The matters of record which clearly establish this claim should have been dismissed are discussed in the memorandum submitted by the Carrier Members. That memorandum is retained in the Master File and by reference is incorporated in this dissent.

A J Naylor

G M Graham

W. B. Jones

P. L. Carter

H M Braidwood