

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to reimburse Extra Gang employees and System Equipment Operators for the travel, meal and lodging expenses they incurred while working away from home at SK Yard in Buffalo, New York (System Case 25.84).

(2) The claim, as appealed by General Chairman Dodd on October 1, 1984 to Director Labor Relations and Human Resources M. Melius shall be allowed as presented because said claim was not disallowed by Mr. Melius in accordance with Rule 35(e).

(3) As a consequence of either or both (1) and/or (2) above, Messrs. J. Banas, M. Brankman, J. Darrah, R. Dillon, E. Greenwood, F. Lipka, R. Lindsay, R. Martel, V. Miner III, J. Rich, C. Senecal, J. Vredenburg and A. Gigliotti shall be reimbursed for the travel, meal and lodging expenses they incurred while working at SK Yard in Buffalo, New York."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The instant case in behalf of the named Claimants involves a dispute regarding the payment of personal expenses to System Equipment Operators and members of an Extra Gang, including the Foreman, Assistant Foreman, and Trackmen, while working at SK Yard in Buffalo, New York. Although the parties have devoted considerable and comprehensive argument to the merits of the Claim, we will not address those arguments because it is a procedural issue which is dispositive of the matter before us.

Initial Claims were appealed in 1983. The cases went through a long process at the lower level appeal steps without resolution. By letter dated October 1, 1984, appeal of Claims was made to Carrier's highest designated Officer. On November 30, 1984, Carrier replied to the General Chairman advising of a time, place and date for conference to discuss the issue of Claim. Carrier therein stated, "With respect to the above claim it is understood and agreed that time limits are waived pending conference discussion."

The General Chairman responded to this letter on December 11, 1984, asserting a violation of the time limit provisions under Rule 35(e) had taken place on the basis of a failure either to sustain or deny the Claim within the requisite time limits.

We concur with the Organization's position. Rule 35(e) specifically provides that should any Claim be disallowed, Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the Claim in writing of the reasons for such disallowance, and that the requirements pertaining to appeal by the employee and decision by the Carrier shall govern in appeals taken to each succeeding Officer, except in certain cases which have no application here. In this instance, the General Chairman filed an appeal with the Carrier's highest appellate Officer on October 1, 1984. Carrier failed to notify the Organization within sixty (60) days that said Claim was disallowed. We are forced to conclude that Carrier failed to comply with the provisions of Rule 35.

The Carrier's contentions that the strict meaning of Rule 35 should not be enforced are unpersuasive. From our careful review of the record, it is apparent that there was no mutual agreement by the parties to waive or extend the contractual time limits. Furthermore, the running of the time under Rule 35 is not halted by the holding of a conference, nor does the Rule require the holding of a conference prior to declination of a Claim. Although Carrier maintained that the Organization " . . . did not ask for a claim decision and none was given," the record clearly establishes that the Organization's October 1, 1984, letter was a valid appeal of the instant case to the designated Carrier Officer. It was the Carrier's responsibility to timely issue a denial of the Claim; its failure to do so compels this Board to allow the Claim as presented.

As a final matter, we have considered the Carrier's argument, raised for the first time in argument before the Board, that the instant Claim differs from that which was presented on the property, and that because of this jurisdictional defect, the Claim must be dismissed.

Even assuming, arguendo, that Carrier's objections may be raised and considered at this late date, we nevertheless have to conclude that they are without merit. Unlike those cases where there is substantial variance between the Claim as it was handled on the property and as submitted to this Board, in the instant case, the Rules relied upon are the same, the facts supporting the

alleged violation are the same, and the theories underlying the Claims are the same. Moreover, the Claimants named on the property are those named in the Claim before this Board. We do note that in some of its correspondence, the Organization referred to differing case numbers. However, the employees at all times made clear that the Claims were in connection with the "Buffalo expenses." From that minor discrepancy, we will not conclude that the Claim submitted to the Board is substantially different from the Claim filed and handled on the property, nor do we find any defect present which would require dismissal of the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.