

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30463
Docket No. CL-29908
94-3-91-3-291

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications International
(Union
(
(CSX Transportation, Inc. (former Seaboard
(Coastline Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10591) that:

1. Carrier violated the Agreement July 21, 1989, when it allowed Clerk S.M. Brazil to be used on No. 201 Clerk Operator without being qualified. Other Clerks are being used off their regular assignment to perform these duties to prevent payment of time and one-half. Qualified Clerks are available.
2. As a result of the above violations, Carrier shall compensate the Senior Available Clerk, extra in preference, eight (8) hours' pay at applicable rate of Position No. 201, Clerk Operator. Also, Carrier shall compensate Clerk J.H. Joyner eight (8) hours' at time and one-half at the same applicable rate as above. Clerk Joyner cleared and annulled Train No. R414-21 and copied two train orders with Fulton Dispatchers account employe used was not qualified. Trainmaster H.J. Williams instructed Mr. Joyner to perform these duties."

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 employee 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 single issue which must be decided in this case is whether the same Carrier officer who is designated to receive claims or grievances must also be the officer who issues the disallowance of such claims or grievances.

There is no dispute or argument relative to the facts in this case. A claim was initiated by the Organization and was submitted to the Trainmaster who was the officer designated by the Carrier to receive such claims. The disallowance was issued in a timely manner, but was issued in the name of the Division Manager - not the Trainmaster. At all levels of subsequent handling on the property, this claim was appealed solely on the basis of the alleged time limit violation. In fact, in its Submission to the Board, the Organization candidly stated, "The claim is being progressed solely on the procedural defect (Rule 37 violation) and the merits of the case will not be addressed."

For the first time at the hearing before the Board, the Carrier representative raised what was perceived by him as a jurisdictional issue. He argued that the Statement of Claim as submitted by the Organization to the Board contained no reference to the alleged time limits violation. Carrier contended that the Statement of Claim to the Board must, under the requirements of Circular No. 1 of the Board, "clearly state the particular question upon which an award is desired." In the absence of such specificity in this case and in light of the Organization's acknowledgment that the alleged time limits violation is the sole basis of appeal to the Board, Carrier argued that the Board lacked jurisdiction over the Statement of Claim as presented.

There is no question but that the Board has no authority to go beyond the issues which have been raised by the parties. Additionally, there is no question but that such issues should be incorporated in the Petitioner's Statement of Claim to the Board. Under other circumstances, such a situation would result in a summary dismissal of the entire case without consideration of any other aspects of the dispute. However, in this case, the alleged time limit violation was, in fact, the sole basis of appeal throughout the entire on-property handling of the dispute.

In addition, the Carrier, in its Submission to the Board, took no exception to the absence of a time limits contention in the Statement of Claim. While we recognize and accept the principle that a jurisdictional issue may properly be raised by either party to a dispute at any level of handling of the dispute, even before the Board (Third Division Awards 27575, 20832, 20165, 19527), we are not convinced that this particular dispute should be summarily dismissed on jurisdictional grounds. We will, therefore, address and rule on the procedural issues which were discussed and joined by the parties throughout the on-property handling of this case and continued in their respective presentations to the Board.

The language of the Rule here in question reads as follows:

"Rule 37 - Time Limits - Claims and Grievances

- (a) 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 sixty (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 notify, within sixty (60) days from the date same is filed, 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."

This Agreement language was adopted by the parties directly from Article V - Time Limits as found in the National Agreement dated August 21, 1954.

In its handling of this case, the Organization contended that the initial claim denial by the Division Manager rather than the Trainmaster created confusion in and disruption to the appeals processes inasmuch as the Division Manager is the designated appeals officer for claims which are rejected at the initial level with the Trainmaster. It acknowledged that the line of arbitral precedent by Boards of Adjustment on this issue has not been uniform or consistent, but it relies in this instance on Third Division Awards 11374, 14031, 16508, 17696, 18002, 22822, 23943, 25092, 26572 and 27501 which, it says, represents the "weight of authority" on the premise that the responsibility for disallowing claims is coexistent with the authority to receive claims.

For its part, the Carrier argued that the specific, unambiguous language of the Agreement does not require that the same officer who is designated to receive claims must be the one who issues the denial of such claims. It contends that for the Board to create such a requirement, the Board would be changing the language of the Rule. This, it says, the Board is not empowered to do. Carrier too acknowledged that there is no unanimity of opinion by Boards of Adjustment on this issue, but it relies heavily on Third Division Award 27590 plus fourteen additional Awards from the Second, Third and Fourth Divisions of the Board, some of which involved this same Carrier. These opinions, the Carrier argued, represent "the weight of authority" which holds that the Rule language requires only that "the Carrier" shall issue notices of disallowance of claims.

The Board studied each of the precedential citations offered by the parties. We have found the following:

1. Third Division Award 11374 was properly sustained by the Board because in that case Carrier's claim denial contained no reference to "the reasons for such disallowance" as required by the Rule. Such a situation is not involved in this case.
2. Third Division Award 14031 did not involve a penalty claim situation subject to the Article V time limit Rule, but rather involved a disciplinary hearing situation totally dissimilar to the instant case.
3. Third Division Awards 16508 and 27501 were each properly sustained because the parties in those cases had, by agreement, amended their respective time limits Rules to specifically identify the particular Carrier officer who was responsible for the issuance of denial notices. Such a Rule requirement does not exist in this case.
4. Third Division Award 22822 was properly sustained because in that case Carrier waited 147 days before denying the claim. That is clearly dissimilar to the instant situation.
5. Third Division Awards 17696, 18002, 23943, 25092 and 26572 embraced the principle that the Carrier officer designated to receive claims must also be the officer who denied such claims.

On the other hand, however, there is a considerable body of precedent which has recognized that the parties who negotiated and agreed upon the language of Article V of the August 21, 1954 National Agreement from which Rule 37 is drawn, were sophisticated, experienced and skilled negotiators and they chose to use language which clearly did not in any way identify the individual who would be responsible for the disallowance of claims. Some Carriers chose to take that additional step on their own as evidenced by Third Division Awards 16508 and 27501. This Carrier chose to retain the words "the Carrier shall notify" from the National Agreement.

In Second Division Award 7953, the Board held as follows:

"The Carrier's primary burden under Article V is only one of notification. There is no specificity as to 'who' or in 'whose name' it shall be done. Admittedly, the burden is not contractually equal. However, we are not authorized to change the inequality as such authority remains with the Parties."

Again in Second Division Award 11952, the Board ruled:

"A number of Awards have concluded that the term 'Carrier,' as found in the context of this style time limit rule, does not require that the officer with whom the claim has been filed make the denial. These Awards concluded that claims are properly denied, if done so timely, by any Carrier officer. In this regard see Third Division Award 27590.

The fact that the instant Claim was denied by an officer of the Carrier other than the officer with whom it was initially filed did not violate the time limit rule."

In Third Division Award 27590, which is the most complete, insightful and scholarly review of both sides of this issue thus far rendered by any Board of Adjustment, we read:

"Accordingly, from our present examination of the 'weight of Authority' on this matter we are not persuaded that the decisions holding that only the individual that received the claim can answer the claim are a correct application of those Article V Time Limit Rules that have not been altered in some fashion so as to express this specific intent. Unaltered Article V Time Limit Rules can not, in our judgment, be read so as to replace 'Carrier' with 'officer' in the second sentence of paragraph (a). To do so is clearly insertion of additional language within the Rule, something the drafters did not see fit to insert, something we must avoid."

Award 27590 is, by reference, made a part of this Award and is dispositive of the instant dispute.

On the sole issue of whether, under the language of the controlling Agreement, the same Carrier officer who is designated to receive claims must also be the officer who issues the disallowance of such claims, the Board holds that on this property under the existing Agreement language the disallowance of a claim is required only by "the Carrier." This claim is, therefore, denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.