

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

READING COMPANY

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

(1) The Carrier violated the Clerks' Agreement when it failed to comply with the necessary procedures and render decisions within the specified time limits covering monetary claims in behalf of Claimants William Smith and Christian Lehr.

(2) Employee William Smith be compensated for five (5) days, March 25th to 29th, 1947, both inclusive, and Employee Christian Lehr be compensated for two (2) days, March 26th and 27th, 1947, at their prevailing rates by reason of the Carrier's action.

EMPLOYEES' STATEMENT OF FACTS: Employees William Smith and Christian Lehr, regularly assigned incumbents of positions of Weighers, Port Richmond Grain Elevator, rate Nine Dollars and thirty-eight cents (\$9.38) per day, were off duty on respective dates during the month of March, 1947. William Smith was off duty March 25th to 29th, 1947, both dates inclusive, and Christian Lehr was off duty March 26th and 27, 1947, account of illness.

Under date of April 1, 1947, claims were presented by William Smith and Christian Lehr for wages for time off duty account of illness, under the alleged violation of Sick Leave Rule. Copies of letters presenting such claims are attached hereto as Employees' Exhibits "A" and "B".

The Superintendent of the Elevator replied under date of April 4th to Claimants Smith and Lehr, as outlined in letters which are attached hereto as Employees' Exhibits "C" and "D".

Claim was filed by Division Chairman under date of May 10, 1947 (Employees' Exhibit "E"), calling the attention of the Manager of Port Richmond Terminal to Rules No. 22 and 44(c), and requesting that claim be paid by reason of violation of Rule 44(c). This claim was denied under date of May 14, 1947, by the Manager of Port Richmond Terminal (Employees' Exhibit "F").

The matter was further handled on appeal of violation of Rules No. 22 and 44, to the General Manager, and from the General Manager to the Assistant Vice-President, under date of August 18, 1947, and discussed in conference on September 5, 1947, at which time it was agreed the claim would be allowed on the basis of violations of Rules No. 22 and 44(c).

therefore, claimants are not entitled to payment for time lost under Rule 16 of the effective agreement.

In conclusion, the Carrier holds the progression of this case on the alleged violation of Rule 22 and paragraph (c) of Rule 44 without regard or consideration of the merits of the facts and circumstances is unreasonable and not justified. Further, that the denial of the claim as submitted was in compliance with and not in violation of Rules 22 and 44 (c). Therefore, the claim should be denied and Carrier requests the Board to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based on the contention that Carrier, when monetary claims were filed with it by the Claimants, failed to comply with the requirements of the rules of the parties' effective Agreement and, because thereof, is liable for the claim made.

The factual situation, out of which this claim arises, is as follows: Claimants, William Smith and Christian Lehr, were regularly assigned incumbents of positions of Weighers at the Port Richmond Grain Elevator. Because of sickness Smith was off duty March 25 to 29, 1947, inclusive, and Lehr March 26 and 27, 1947. On April 1, 1947 each of these Claimants filed a claim with the Carrier asking to be paid for the time they were off. They addressed their separate claims to George Blankley, Superintendent, Grain Elevator. Therein, as a basis for their claims, they stated the Carrier had, while they were off duty because of illness, filled their positions with men not covered by the Clerks' Agreement and, as that resulted in no extra cost to the Carrier, they asked to be paid for these days.

On April 4, 1947 Superintendent Blankley replied to each of these claimants and included in said replies the following:

"This matter was referred to Mr. E. F. Keene, Manager, Port Richmond Terminal, for consideration, and as a matter of information, he had advised me that your claim will be disallowed." or * * * not be granted."

Thereafter, on May 10, 1947, the Brotherhood's Division Chairman, William Freeborn, advised Mr. E. F. Keene, Manager, to whom the original claims had been referred for decision, that Carrier had not, in acting on said claims, complied with Rules 22 and 44 (c) of their Agreement and that, because thereof, both claims should be allowed. Manager Keene replied to this letter on May 14, 1947 advising the Division Chairman that the claim, as originally made, was without merit and that the Claimants had been advised thereof within the time limit set forth in the Rules for that purpose.

It is from this claim of the Division Chairman that this appeal was taken. The rules therein referred to are as follows:

Rule 44 (c)—"When claims have been presented in accordance with paragraph (a) of this rule, the employe and the representative will be notified, in writing, of the decision of the Management within thirty days from the date claim was presented. When not so notified, the claim will be allowed."

Rule 22—"When time is claimed in writing and such claim is not allowed, the employe making the claim and the representative shall be notified in writing and the reason for non-allowance given."

These rules are for the purpose of expediting procedure and preventing unnecessary delays on the property. Rule 44 (c) contemplates and requires that a decision shall be made by the Carrier within 30 days and after a monetary claim is presented to it in accordance with Rule 44 (a) and that the employe making the claim, and his representative, be notified thereof within that time and, if not so notified, the claim to be allowed. Rule 22 requires that the Carrier, in making its decision, give its reasons therefor if the claim is disallowed. This, so Claimant may know Carrier's position and its reasons

therefor in order to determine the relative merits of the parties' respective contentions and help determine whether or not an appeal is desirable.

The April 4, 1947 letters of Superintendent Blankley to the Claimants show that the responsibility of originally determining whether or not these claims would or would not be allowed had been placed by Carrier on E. F. Keene, Manager, and did not reside in him. Consequently, Superintendent Blankley had no authority to make such decisions. That Superintendent Blankley had been advised by Keene as to what he contemplated doing is evidenced by his letter wherein he states that your claim "* * * will be disallowed" or "* * * will not be granted". This statement, as to what he had been advised by Manager Keene would be done in regard thereto, does not, in our opinion, constitute a decision such as is contemplated by Rule 44 (c). We think the rule requires that a decision actually has to be made by the officer of the Carrier on whom that responsibility has been placed, which in this case was Manager Keene, within the time as therein specified, that Rule 22 requires that he give his reasons for so doing if the claim is disallowed, and that the employe and his representative be notified thereof in writing within the time as required by Rule 44 (c). Having failed to comply with Rule 44 (c) the claims, by the express provision thereof, must be allowed. Nor does the provision of the rule contemplate, when it is applicable, that the merits of the claim shall be considered. Consequently, we shall not do so.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.