

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LONG ISLAND RAIL ROAD COMPANY, Debtor
WM. WYER, Trustee

STATEMENT OF CLAIM: Claim of the Long Island Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Rail Road that the Carrier violated letter of agreement, dated December 12, 1946, when it failed to make certain money payments to the claimants referred to in such agreement, that the Carrier shall now be required to compensate each and every employe involved the full amount of money due and contemplated in such agreed to settlement.

EMPLOYES' STATEMENT OF FACTS: Under date of September 24, 1946, a notice was served to file an ex parte submission to the National Railroad Adjustment Board covering an unadjusted dispute between our organization and the Pennsylvania Railroad (Long Island Rail Road), New York Zone, as follows:

"(a) Claim that the Carrier violated the Signalmen's agreement commencing on November 29, 1943 when it changed the assigned starting time of a T. & S. gang with headquarters at Jamaica, L. I. from 8:00 A. M. to 6:00 A. M. without readvertising the positions involved in the change.

"(b) Claim that all signalmen and helpers of this gang who were notified to report at their headquarters two hours in advance of their regular starting time be paid a minimum call of two hours and forty minutes at the time and one-half rate in lieu of the two hours at straight time rate paid for each day they were notified to report in advance of regular starting time."

On December 6, 1946, Carrier submitted following letter to General Chairman C. M. Banks:

"New York 1, December 6, 1946

Mr. C. M. Banks, General Chairman
Brotherhood of Railroad Signalmen of America
Room 211, Wilkinson Building
203 E. State Street
Trenton 8, N. J.

Dear Sir:

The following claim now pending before the National Railroad Adjustment Board, Third Division, was discussed at meeting on November 19, 1946:

to permit a determination of its alleged merits since, as pointed out in the undersigned's letter of April 7, 1950, the Brotherhood has failed to identify the claimants as well as the amounts allegedly due them. Further, the adjustments made in the disposition of the claim covered by the General Manager's letter of December 12, 1946, was the result of a joint check by a representative of the Brotherhood and the Management. Therefore, since this joint check was concluded in October of 1947, Management had every right to consider that in the absence of any specific information to the contrary, that the adjustment made was satisfactory to all concerned.

For the reasons stated above, the instant claim is without merit and should therefore be denied.

(Exhibits not reproductd.)

OPINION OF BOARD: The Organization initially processed a claim based upon a change in assigned starting time of a T. & S. gang, headquartered at Jamaica, Long Island, from 8 A. M. to 6 A. M. without readvertising the positions involved in the change. Under date of September 24, 1946, the Organization served notice that it would file an ex parte submission to this Board.

On December 6, 1946, the Carrier made written offer to settle the claim upon the basis of time and one-half for the period 6 A. M. to 8 A. M. On December 10, the General Chairman wrote the Carrier's representative, stating in part:

"Your offer as outlined in this letter is not satisfactory to us as it would not cover the amount of pay that we have claimed for these employes as outlined in paragraph (b) of the claim. These employes have been paid two hours at straight time rate for each day they were notified to report in advance of their regular starting time. As our claim is outlined in paragraph (b) these employes should receive two hours and forty minutes at the time and one-half rate which would amount to an additional two hours' pay at the straight time rate. * * *"

The Carrier acceded to the Organization's demand in writing on December 12, 1946.

The claim was withdrawn from further consideration of this Board by letter dated December 16, 1946.

After making a joint check of records, a list of employes affected was drawn up by the Vice Chairman and a representative of the Carrier for the approval of Carrier's Manager of Personnel. The latter took the position that employes shown on the list who did not start at 6 A. M. should not be shown as being covered by the settlement. A number of the employes listed had, in fact, started work at the direction of the Management at 6:30 A. M., 7 A. M., and 7:30 A. M. Further conference was held between the General Chairman and Manager of Personnel without resolving the dispute. On May 5, 1950, the Organization asked the Carrier to join with it in submitting the claim to this Board. Carrier refused and the Organization filed an ex parte submission in September 15, 1953, over three years later.

The Carrier contends that the instant claim is invalid because it has not been handled upon the property in accordance with Article 2, Sec. 21 (a) of the Agreement. We find from a study of the docket that claim asserted and processed through the earlier stages of attempted settlement concerned only Signalmen and helpers of a T. and S. gang headquartered at Jamaica "who were notified to report at their headquarters two hours in advance of their regular starting time." No reference is made in such claim to other employes who may have reported, under instructions, an hour and a half, an hour or a half-hour before their starting time at 8 A. M. No showing is made that these latter employes filed claims in accordance with Article 2,

Section 21. The clear enlargement of the claim to include employees reporting after 6 A. M. was not asserted until December 16, 1949, over two years after settlement remittances had been made to those reporting at 6 A. M. It was then asserted to the General Manager and not to the Superintendent as required by the Agreement of June 1, 1943, concerning the Handling of Controversial Matters.

Further, a reading of the letters containing the offer, counter-offer and acceptance, convinces us that the settlement made was fully in line with the Agreement. That a subordinate officer included other employees in the joint check made was in no way binding upon the Carrier as it was the Manager of Personnel who was authorized to review the report and speak for the Carrier.

The fact that at the time the settlement was being negotiated the Carrier knew that other employees were ordered to start work at a later time is immaterial. They were not covered by the claim asserted and it was that claim, which related only to those who had reported two hours before their regular starting time, that was in formal issue. As to the employees reporting after 6 A. M., who are now contended to be involved, the record is completely silent in respect to the basis of their claims. And, as we have previously indicated, they cannot ride in upon the coattails of the original claimants who are easily identified from a reading of the initial claim as those members of a named T. and S. gang "who were notified to report at their headquarters two hours in advance of their regular starting time," or, in short, at 6 A. M. They are even more specifically identified in the Joint Statement of Agreed Upon Facts signed by the Local Chairman and the Superintendent appearing as Trustees' Exhibit "H."

We have this date in Award 6721 disposed of Carrier's contention for an implied time limitation in processing appeals to this Board. What we say there is likewise applicable here.

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 the letter agreement of December 12, 1946, was not violated but, on the contrary, was fully discharged and the within claim is without merit for the reasons stated in the Opinion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of July, 1954.