Award No. 9253
Docket No. MW-8273

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the effective Agreement when it failed to allow Carpenter Albert Fountain full overtime pay for work performed outside of his regular assigned hours while assigned to relieve a Cook during the periods August 16 to 20, 1954, and September 7 to 10, 1954 inclusive;

(2) Carpenter Albert Fountain now be allowed 10½ hours overtime pay account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant Albert Fountain is regularly assigned as a carpenter in Bridge and Building Carpenter Gang No. 2, Champlain Division. His hours of assignment as such are from 7:00 A. M. to 4:00 P. M., with a noon meal period of one (1) hour.

During the period August 16 to 20, 1954, and September 7 to 10, 1954 inclusive, Carpenter Albert Fountain was assigned to work in excess of eight (8) hours per day in relieving a Cook, aggregating a total of twenty-one (21) hours of overtime work for which he was only allowed ten and one-half (10½) hours pay at his applicable overtime rate.

Claim was filed in behalf of Claimant for ten and one-half (10½) additional overtime hours pay and under date of April 20, 1955, the Carrier's highest Operating Officer designated to handle claims advised "Claim is denied", as will be noted in the following quoted letter:

"THE DELAWARE AND HUDSON RAILROAD CORPORATION

ALBANY 1, NEW YORK

C. H. House,
MANAGER OF PERSONNEL

We respectfully request that our claim be allowed.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACTS: During the periods August 16 to 20 and September 7 to 10, 1954, both dates inclusive, Carpenter Albert Fountain worked as a cook for his B&B gang while the regular cook was on vacation. During these periods, Carpenter Fountain was cooking for three employes. His foreman reported one hour overtime at the beginning of the day for days when breakfast was prepared and one-half hour overtime at the end of the day for cleaning up after the evening meal on days when an evening meal was prepared. No breakfasts were prepared on the first day of the work week and no evening meals were prepared on the last day of the work week. Carpenter Fountain was allowed a total of 10½ hours' overtime and claim is for an additional 10½ hours' overtime.

POSITION OF CARRIER: It is the position of the carrier that Carpenter Fountain has been properly paid for all hours worked. Although the organization has not stated how the hours claimed were arrived at, the carrier believes they are claiming that it took Carpenter Fountain two hours to prepare breakfast for three men and that it took one hour to clean up after the evening meal. The carrier further believes that the claim is based on overtime paid to Carpenter Fountain for working as a cook at some previous time when the gang consisted of ten employes. It would seem more than a little ridiculous for the employes to contend that it would take anyone two hours to prepare breakfast for three people, or that Carpenter Fountain actually spent two hours preparing breakfast. The same would apply to cleaning up after the evening meal. In each instance, the time worked has been certified by the Foreman who was living in the boarding car. See Exhibits A and B attached.

Both prior to and following the periods that Carpenter Fountain acted as a cook, the hours of actual service reported by the Foreman for the regular cook were the same as the hours worked by Carpenter Fountain on the days he was the cook. Even though the regular cook is paid a monthly rate for all service as a cook, with some exceptions which did not exist during the periods of this claim, his actual time worked has to be reported in accordance with regulations prescribed by the Interstate Commerce Commission with respect to wage reporting.

Claimant has been properly compensated for work performed and carrier respectfully requests that claim be denied.

Management affirmatively states that all matters refered to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns the amount of overtime pay to which Claimant, a carpenter, is entitled for work performed as a cook outside of his regular assigned hours.

Petitioner maintains that, quite apart from the merits of the case, the claim must be allowed since in denying it on the property, Carrier's

Manager of Personnel failed to inform the Claimant or his representative, in writing, of the reason for his decision and therefore contravened the provisions of Article V of the applicable Agreement of August 21, 1954. An examination of Article V, Sections 1 (a) and (c) and 2, establishes that such written notification was necessary in the present case and that if it were not given, those provisions require that "the claim shall be allowed as presented." Section 2 of Article V clearly makes these rules applicable to the factual situation now before us, even though the claim arose prior to their effective date. It is apparent from the record that the Manager of Personnel, who disallowed the claim by letter dated April 20, 1955, did not comply with the requirement as to written notification, since he merely stated that "Claim is denied" and advanced no reason for the denial.

This requirement is mandatory and affords us little latitude in its application. It plainly requires that claimants be notified, in writing, of the reasons for the disallowance of their claims, and it is not sufficient that they be advised orally or may reasonably be assumed to know those reasons. This may appear to be a highly technical requirement and we would very much prefer not to base a decision on a procedural point of this type. Nevertheless, each of the contracting parties—the Carrier as well as the Organization—is responsible for the inclusion of the Article V language in the Agreement and what we may think of its wisdom, importance or soundness is not at all material. It is our function to interpret the Agreement as it now stands and not to rewrite it in accordance with our own theories of labor-management relations. See Award 9189.

Here the commitment is clear and unambiguous with respect to the immediate point in issue and it is entirely certain that the Carrier has not complied with a plain requirement expressly made essential by a written agreement to which Carrier is a party.

There is no merit in the contention that the claim was not presented in a timely or proper manner. The only basis suggested for this argument is that Petitioner's letter of October 3, 1955, informing the Manager of Personnel that the claim must be allowed in view of his failure to give the aforementioned written notification, amounted to a new claim which should have been presented, within sixty days from the date it arose, to the Division Engineer, the officer authorized to receive claims at the first procedural step on the property, and not to the Manager of Personnel. We cannot accept this line of reasoning. The instant claim never ceased to be the true and only claim in this matter and the record is clear that it was properly processed. Petitioner's letter of October 3, 1955, far from being the equivalent of a new claim, was simply an ordinary communication regarding the claim already in existence and an obvious effort to dispose of the matter on the property.

In view of the record before us and the clear mandate of Article V, we have no alternative but to sustain this claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Article V of the applicable Agreement of August 21, 1954, has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.