Award No. 9615
Docket No. SG-9116

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on The Central Railroad Company of New Jersey, The New York and Long Branch Railroad, that:

(a) The carrier violated and continues to violate the provisions of the Signalmen's Agreement and establish past practice when it fails and refuses to re-advertise gang positions, or pay the men involved in accordance with overtime rules when changing headquarters from one point to another.

(b) All employes affected by this arbitrary change in practice and in violation of agreement rules be allowed an adjustment in pay for all time traveling to and from the changed headquarters point, based upon their last regularly bulletined assignment until new headquarters are established in accordance with bulletin rules.

EMPLOYE'S STATEMENT OF FACTS: A dispute arose between the General Committee and the Carrier over the application of certain agreement rules and was handled as a protest up to and including the highest officer on this Carrier designated to handle such matters, and his decision was rendered on March 24, 1954. Subsequently, and since this was a continuing violation, the General Committee on September 17, 1954, presented the monetary claim now before this Board, which was again handled in the usual manner and appealed up to and including the highest officer but has not yet been declined by him as provided in the August 21, 1954 Agreement.

The claim was presented by the Local Chairman to the Signal Supervisor on September 17, 1954. It was denied by the Supervisor on September 22, 1954. The General Chairman then appealed the claim to the Signal Engineer on October 12, 1954, and it was denied under date of December 31, 1954.

Further appeal was then made on January 18, 1955, to the Vice President and General Manager by the General Chairman. Conferences were held and discussions continued up to July 12, 1955, without a declination of the claim as provided in the August 21, 1954 Agreement.

In the first handling of this question, decision was rendered by me on March 24, 1954. Therefore, employes were required to submit this question one year from the effective date of the agreement, or January 1, 1955, to your Board. This they failed to do.

On the claim progressed to me under date of January 18, 1955, after the effective date of January 1, 1955 of the time limit agreement it should have been progressed to your Board within 9 months of the decision by me contained in my letter of February 16, 1955, or not later than November 16, 1955. This they failed to do.

The Carrier has shown:

1. The claim is without merit under the rules;

2. It is a request for a new rule;

3. It is not supported by past practice;

4. It is not properly before your Board under the time limits on claims rule;

and the claim, therefore, should be denied in its entirety.

The Carrier affirmatively states all data contained herein has been presented to the employes representative.

OPINION OF BOARD: Quite apart from the merits, Petitioner seeks allowance of this claim by reason of provisions of Article V of the August 21, 1954 Agreement which read as follows:

> "Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented . . ."

Petitioner contends that although the claim was presented by the General Chairman's letter dated January 18, 1955 to Carrier's Vice-President and General Manager, the latter failed to render a decision thereon in accordance with those provisions.

The General Chairman's letter dated January 18, 1955 and the letter of response thereto of Carrier's Vice-President and General Manager dated February 16, 1955 must be considered and read together. An impartial reading of this correspondence leads us to the conclusion that the timely responding letter reasonably conveyed notice that the claim was not allowed.

The General Chairman's letter asserts the claim on the basis that agreement rules were violated and that management arbitrarily changed established past practice. By stating in his letter of response thereto that "This is an old subject, and in our discussions it developed it is not specifically indicated in any of the rules in your agreement that when headquarters of a gang is changed the positions are then to be considered new ones and re-advertised", the Carrier's official indicated his view that the claim was not supported by the rules agreement. By stating in such response that "In attempting to find out what our past practice had been, we found that those cases we had a

record of were equally divided between the number of times when the positions were re-advertised and those when it was not advertised", the Carrier's official also indicated his view that the claim was not supported by past practice. The only conclusion which we can reasonably draw from these statements of the writer of this letter of response is that he thereby indicated that the claim was not allowable under the rules agreement or past practice. While the writer also indicated willingness to consider some recommended workable arrangement, that is clearly stated to be "for the future". It is clear that this suggestion did not relate to the present claim.

Aricle V of the August 21, 1954 Agreement does not prescribe the words or language which must be used to give notice of the disallowance of a claim.

FINDINGS: The Third Division of the Adjustment Board, after giving 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 August 21, 1954 Agreement was not violated.

AWARD

Claim dismissed in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 2nd day of November, 1960.

DISSENT TO AWARD 9615, DOCKET SG-9116

This award is in error in that it does not interpret and apply the rules in the light of the facts and circumstances set forth in the record.

The letter of February 16, 1945 which the majority, consisting of the Referee and the Carrier Members, say "reasonably conveyed notice that the claim was not allowed" was not so looked upon by the author himself, namely, the Vice President and General Manager, until the case came to this Board.

The Vice President and General Manager, upon being informed under date of November 23, 1945, that he had allowed the claim to become payable through default under Article V of the August 21, 1954 Agreement, made no response whatsoever. It was not until after he had been reminded again under date of January 27, 1956, that he was in default and the claim must be allowed that the Employes were extended the courtesy of an answer. In his answer the Vice President and General Manager took the position that the matter had been

ruled on by him prior to January 1, 1955; therefore, the Employes had a period of 12 months in which to appeal the matter to the Board and having failed to do so before January 1, 1956, the claim was barred.

The majority was well aware that (1) Carrier's charge of default on the part of the Employes was not made until after January 1, 1956, even though Carrier had been put on notice under date of November 23, 1955, that it had permitted the claim to become available through default, and (2) the alleged ruling relied upon by Carrier was rendered prior to the time the instant claim was filed on the property.

The majority concludes by saying that "Article V of the August 21, 1954 Agreement does not prescribe the words or language which must be used to give notice of the disallowance of a claim." which is true. However, it is inconceivable that a railroad Vice President and General Manager should experience difficulty in finding language adequate to clearly convey his intention to deny a claim. The record discloses that his subordinates seem to experience no difficulty whatsoever in specifically setting forth their respective denials of the claim.

In this award the majority instead of interpreting and applying the rules to the facts and circumstances contained in the record obviously reached a decision first, then proceeded to look around for something to justify it, which is not in keeping with the purpose and intent of the Railway Labor Act. Therefore, I dissent.

/s/ G. Orndorff
Labor Member