

Award No. 9760

Docket No. CL-9371

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

1. The Carrier violated the terms of the currently effective Agreement between the parties when it failed and refused to pay claim filed in writing, which was not declined within the prescribed time limits.

2. J. W. Hallowell, Cashier, Carthage, Missouri, now be allowed the difference between what he was paid and eight hours at time and one-half each day, October 22 and October 29, 1955, for service performed on his rest days.

EMPLOYEES' STATEMENT OF FACTS: On October 22 and again on October 29, 1955, Cashier J. W. Hallowell, at Carthage, Missouri, was called for service on his rest day. He filed prescribed form CT-14 Standard, immediately after each date, claiming eight hours at time and one-half for the services performed on those dates. He was not notified, either verbally or in writing, that his claims were being denied, or in any manner reduced. The Carrier, however, somewhere along the line, reduced these claims to a basis of two hours at time and one-half, and paid him accordingly, without in any manner notifying him that his claim was being denied for six hours on each date. These claims have been handled with the Carrier up to and including, Mr. J. K. Beshears, Director of Labor Relations, the highest officer to whom appeals may be made, but not resolved, as indicated in the last paragraph of Mr. Beshears' letter of March 20, 1956, file 001-167-Hallowell, reading as follows:

"Under the circumstances, I cannot agree to allow the additional time claims on the basis that the Carrier did not render a decision within the time limit specified in Article V of the August 21, 1954 Agreement, but in view of the facts peculiar to this case, and with the understanding that the time limit question will not be made an issue by either party, I would be willing to hold the two claims in abeyance for further consideration after decision is rendered by the 40-Hour Week Committee in the dispute concerning rule 44(b). Mr. Hallowell, as you know, has some other claims which have been so handled."

time could not be allowed on the basis the Carrier did not render a decision within the time limit specified in Article V of the August 21, 1954 Agreement, but in view of the facts peculiar to this case, and with the understanding that the time limit question would not be made an issue by either party, the Carrier offered to hold the two claims in abeyance for further consideration after decision is rendered by the 40-Hour Week Committee in the dispute concerning Rule 44 (b). That is the decision which the organization has appealed to this Board.

Article V of the August 21, 1954 Conference Committee Agreement became effective January 1, 1955. The Brotherhood timely presented and progressed on appeal up to and including the highest officer of the Carrier an accumulation of 192 individual claims in behalf of Cashier J. W. Hollowell, Carthage, for the difference between time allowed and a minimum of eight hours at time and one-half rate for services rendered on various specified rest days in the period July 8, 1950 up to and including February 12, 1955, and for the period March 5, 1955 through February 4, 1956 41 additional and like claims have been presented and progressed on appeal in behalf of Mr. Hollowell. The 233 claims do not include the two claims involved in this dispute which the organization is contending are allowable as presented because the claimant was not notified of the change made in his time returns accompanying the regular station payroll. The other 233 claims presented in his behalf are predicated upon Rule 44 (b) and as the dispute concerning that rule is still pending before the 40-Hour Week Committee, the parties are holding the claims in abeyance for further consideration after decision is rendered by the 40-Hour Week Committee.

The facts and circumstances involved in this dispute do not warrant a sustaining award and this Division is requested to so find.

All data submitted in support of Carrier's position have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The claim is that Carrier violated the terms of the agreement between the parties when it failed and refused to pay claim filed in writing, which was not declined within the prescribed time limits, and therefore J. W. Hollowell, the Cashier at Carthage, Missouri, should now be paid the difference between what he was paid and the amount sought by him.

On October 22 and again October 29, 1955, Mr. Hollowell was called for service on his rest day. He filed Form CT-14 Standard immediately after each date, claiming eight hours at time and one-half. The Carrier reduced these claims to two hours at time and one-half and he was paid accordingly. The difference between the amount paid and that claimed is \$17.25 for each day or a total of \$34.50.

The claim is based on Article V, Section 1 (a) of the Agreement of August 21, 1954, which reads:

“(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 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, 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, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

and also on Rule 49 of the Agreement of January 1, 1946 to the effect that:

"Disallowing Overtime"

"Rule 49 When time is claimed in writing and such claim is disallowed, the employe making the claim shall be notified in writing and reason for nonallowance given."

The record shows that the highest ranking officer of the Carrier to whom appeals may be taken, on March 30, 1956, long after the sixty days had expired, wrote:

"Under the circumstances, I cannot agree to allow the additional time claims on the basis that the Carrier did not render a decision within the time limit specified in Article V of the August 21, 1954 Agreement, but in view of the facts peculiar to this case, and with the understanding that the time limit question will not be made an issue by either party, I would be willing to hold the two claims in abeyance for further consideration after decision is rendered by the 40-Hour Week Committee in the dispute concerning rule 44 (b). Mr. Hallowell, as you know, has some other claims which have been so handled."

The Carrier contends that Rule 44 (b), the "Call rule" is before the Forty-Hour Week Committee and the matter should be held in abeyance until decision is reached by that body and therefore the claim is invalid; that Rule 49 set out above as well as those immediately preceding it all deal with overtime; that Rule 49 is merely directory and not mandatory; that the claim of Employe did not develop until he discovered the alleged shortage and therefore a question of timely filing is involved.

The Employes state that while the claim originally was based on Rule 44 (b), the Board is not now requested to decide any issue regarding Rule 44 (b) but on Article V of Agreement of August 21, 1954, and Rule 49 of the Agreement of January 1, 1946; that the contention Rule 49 deals only with overtime is denied as is the assertion that it is directory and not mandatory, that the claim was not timely filed and that there was no valid claim in the first instance.

There are obvious answers to these questions but we need only emphasize the one controlling and overriding issue in this case—and that is, whether within sixty days of the filing of the claim (in October, 1955) it was disallowed and the employe "notified in writing of the reason for such disallowance". (Article V, Section 1 (a).) And "If not so notified, the claim or grievance shall be allowed as presented * * *".

The Carrier asserts that the original claim must be a valid one and cites a number of Awards having to do largely with claimants whose names were undisclosed; the Employes on the other hand refer to Awards holding that under these or similar circumstances no consideration shall be given by the Board to the claim on the merits. (Award 6789-Shake, Award

4529-Wenke, Award 7713-Smith, Award 8318-Daugherty, Award 8412-Daugherty, Award 3280-Carey, Second Division, and Award 19343-Roberts, First Division.)

Obviously there is hardly a way to determine the issue of validity of a claim without a hearing; and if a hearing on the merits is necessary then the rule that if a disallowance is made and claimant "not notified in writing of the reasons for such disallowance" within sixty days the claim "shall be allowed as presented", is not worth the paper on which it is written and before long the allowance by force of the rule will disappear in favor of finding on the merits only.

Under Article V, Section 1 (a) of the August 21, 1954 Agreement the claim should be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement of August 21, 1954.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1960.