

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated Agreement on August 3, 4, 5, 6, 8 and 9, 1955, when it used employe of another craft (having no seniority as telegrapher) to perform work of position of Agent, Monterey, Tenn.

2. In due and apt time and in the manner provided in Article V, August 21, 1954 Agreement, Employes filed claim of violation as set forth in Paragraph 1. Carrier representative failed and refused to comply with provisions of such rule, and further, after such default, failed and refused to allow claim as presented.

Carrier will be required to compensate senior idle employe (extra in preference), covered by Telegraphers' Agreement, for 8 hours, at the pro rata rate of the position of Agent, Monterey, Tenn., for August 3, 4, 5, 6, 8 and 9, 1955.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the Tennessee Central Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective May 1, 1924, and has been amended in many respects. The original agreement, as amended, is on file with this Division and is, by reference, included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Board, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issue or issues.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF THE BOARD: This is a controversy between The Order of Railroad Telegraphers as complainants and the Tennessee Central Railway Company.

There are but two point to consider (a) The Time Limit Rule (b) The Merits of the Case.

Let us first examine the time limit. The agreement specifically states that there shall be 60 days to file a claim and then 60 days to act upon said claim.

The first complaint was filed on December 5, 1955 with Mr. Caskey Knott of the Carrier. No reply was received and on January 29, 1956, the Claimant again sent a letter to Mr. Knott. When no reply had been received by February 16, 1956, a third letter was written which was answered by Mr. Knott on February 21, 1956.

At that time, Mr. Knott fixed a date to have a conference on February 28, 1956. Such conference was held and on March 10, 1956, Mr. Knott wrote to Mr. Wiggerman who was acting for the complainant. In this letter it was agreed at this meeting of February 28th no settlement was reached. But the claims were not denied. However, it is strange to note that in the slipshod manner this case was handled there never was a denial of the claim or objection made as to the invalidity of the claim.

Indeed, time went on until May 21, 1956 when Mr. Wiggerman wrote Mr. Knott contending that the Time Limit Rule had not been complied with and requested payment of the claim as presented. It was not until June 6, 1956 that the claim was denied.

Having disposed of The Time Limit Rule violation there is no need to consider the merits of the case.

Both sides were careless in the handling of the claim and certainly none can point with pride to his actions whether it be complainant or Carrier.

This claim should have been denied or approved in 60 days or February 3, 1956.

Even though there may have been an oral agreement as is to be inferred at the meeting of February 28, 1956, yet there is no legal grounds for such an agreement unless it was in writing agreed by both parties as being binding as to a time extension.

If some degree of care were exercised in handling claims of this nature, many of them would never come to the attention of this Board.

There was a positive violation of the 60 day time limit. Having decided there was a violation, the claim must 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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1961.