

Award No. 10948

Docket No. CL-10122

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

The Bureau violated Article V of the Agreement dated Chicago, August 21, 1954, in failing to render decision within the sixty day time limit period in claim of N. E. Sherwood, Supervisor of Weighing, Kansas City, Missouri, and others, for wage losses during the 116 workday period January 21 to July 3, 1957.

NOTE: Reparation due employes to be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary to establish proper claimant(s).

EMPLOYEES' STATEMENT OF FACTS: The Bureau issued on January 16, 1957 their Bulletin No. 2, apparently for the purpose of abolishing Position Number 200, Chief Grain Weight Supervisor, at the close of business Monday, January 21, 1957, and showing the present occupant as retired. Employees' Exhibit 1.

The General Chairman filed claim on February 27, 1957, (Employees' Exhibits 2-A and 2-B) with the Bureau official that had issued the bulletin abolishing Position Number 200, pointing out in detail the duties of Position Number 200 were still being performed except at a lesser rate of pay.

Employees' Exhibits 3 and 4 confirm a conference between the parties on April 10, 1957 at which time the Bureau was furnished with complete information from the statements furnished the General Chairman from Mr. J. F. Nugent who had just retired and from the other employes that were previously under the supervision of Mr. Nugent with the title of Traveling Grain Weight Supervisors, but whose rate of pay were less than that established for Position Number 200, Chief Grain Weight Supervisor.

The reply from District Manager F. C. Schumacher dated June 12, 1957 (Employees' Exhibit 5) to the General Chairman's letter of February

June 12, 1957 and then in that very same letter in the second paragraph he makes the statement that in view of the fact the Bureau has now violated Article V of the agreement dated August 21, 1954 by their failure to render a decision within the prescribed time limits that he concludes that the file in this dispute while on this property so far as he was concerned was closed.

Now, gentlemen of your Honorable Board, we say to you in all fairness that inasmuch as the General Chairman himself in letter of February 27, 1957 to District Manager Schumacher, as shown in our Exhibit No. 2 of two pages, expressed his willingness to extend the time limits, coupled with the fact that he ignored our invitation to join with District Manager Schumacher in making such investigation as was deemed necessary, places the responsibility, in our opinion at least, on the General Chairman, and we feel certain that after the gentlemen of your Honorable Board review the facts presented herein you will reach but one conclusion and that is this claim is without merit and must, therefore, be declined.

All information contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 16, 1957 Carrier issued a bulletin abolishing the position of Chief Grain Weight Supervisor, Kansas City, Missouri as of January 21, 1957. (NOTE: All dates referred to herein are in the year 1957 unless otherwise indicated.) On February 27 Employees filed claim with Carrier's District Manager, herein referred to as District Manager, demanding: (a) "re-establishment" of the position as of January 21; and; (b) Employees adversely affected by Carrier's failure to bulletin the position as a vacancy be made whole. The Carrier did bulletin the position as a vacancy on July 3. The Statement of Claim filed with this Board by Employees is specifically confined by its terms to the period from January 21 to July 3.

We are not here concerned with the merits of Employee's claim addressed to Carrier's District Manager on February 27. The case is before this Board solely on Employees' Statement of Claim, filed with the Board, that Carrier violated Article V of the National Agreement dated August 21, 1954 (adopted by Agreement of the parties on September 10, 1954); and, implicitly, by the mandate of Article V, 1 (a) the "claim . . . shall be allowed as presented."

The pertinent provisions of Article V are:

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee 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 employee 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.

“(b) . . . It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.”

The facts material and relevant to the issue are: In the claim addressed to District Manager by Employees under date of February 27 the last paragraph reads:

“We are willing to extend the time limits in this instance if you desire a conference between the parties for the purpose of discussing all the reports that have been accumulated before rendering your decision in this instance.” (Emphasis ours.)

District Manager replied under date of March 21:

“I am agreeable to extending the time limit in this instance for a conference with you, the date of which I am setting for **this** conference to be held in my Office, April 10, 1957.” (Emphasis ours.)

The conference was held on April 10. The record reveals no further actions by or communications between the parties, relative to the pending claim, until June 12, on which date District Manager wrote a letter to Employees which Employees construed to be a denial of the claim. Thereafter, on June 21, Employees appealed the District Managers' denial of the claim to Carriers' Manager, herein referred to as Manager. In the appeal Employees stated:

“. . . we are making no attempt at this time to discuss the merits of this file in view of the fact the Bureau has now violated ARTICLE V of the agreement dated August 21, 1954, by their failure to render a decision within the prescribed time limits.

“We therefore ask that you please arrange to handle in line with the claim basis outlined in our letter of February 27, 1957, to the Bureau.”

Thereafter, there was at least one meeting and some correspondence between the parties relative to the claim. The Manager formally denied the claim on October 25, 1957 — approximately 125 days after it was filed.

The issues presented in this case are: (1) Did the District Manager disallow the claim within 60 days in compliance with Article V, 1 (a)?; and, (2) Did the Manager disallow the claim upon appeal in compliance with said Article?

Employees contend that the 60 day period, within which District Manager was contractually bound by Article V, 1 (a) to deny the claim, tolled from the conference of April 10—the District Manager did not deny the claim until June 12, 1957, 63 days after April 10, 1957—the

claim not having been denied within 60 days, Article V, 1 (a) makes mandatory that it be allowed as presented.

Carrier contends that the parties by Agreement extended the 60 day period for an indefinite time; and, the 60 day period provided for in Article V, 1 (a) could not begin to run until the date of a beginning fixed by Employees by notification to Carrier.

The best evidence from which the intent of the parties as to the duration of the stay of the running of the 60 day period can be determined is the Employees offer and Carriers acceptance of the stay (both are set forth, above). In both the offer and acceptance the words "a conference" are used; and, the Carriers' acceptance refers to "**this** conference." This evidence is persuasive that it was the intent of the parties that the running of the 60 day period was stayed only to the date of holding "a conference;" and, "this" conference having been held by Agreement on April 10, the 60 day period provided for in Article V, 1 (a) began to run on April 11. Therefore, it is held that District Manager, by failure to deny the claim until 63 days after April 10, violated Article V, 1 (a) and the Employees claim by mandate of said Article must be allowed as presented.

(Emphasis ours.)

In view of the above findings and conclusions we find it unnecessary to pass upon the question as to whether Manager, also, failed to comply with Article V, 1 (a).

In Carriers' argument before the referee it contended that if it be held that District Manager violated Article V, 1 (a) the relief granted must be restricted to the period from the initial date of the continuing violation to the date District Manager denied the claim. We find nothing in Article V, 1 (a) to support such a contention of limitation. Instead, we find that the Article, clearly and unequivocally without limitation or qualification, makes mandatory that the "claim . . . be allowed as presented."

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 Carrier violated Article V, 1 (a) of the National Agreement dated August 21, 1954, adopted by the parties September 10, 1954.

AWARD

Claim sustained as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10948, DOCKET CL-10122

While we disagree with the majority conclusion that the Bureau was in default under Article V in this particular case, the majority committed a serious error in construing Article V as allowing the claim that was referred to the Division. Where, as here, a sustaining award is made because a carrier officer failed to timely disallow the claim, and the merits of the claim were not before the Board, we fail to see how the claim can be sustained beyond June 12, 1957 — see Awards 10401 (Mitchell) and 10644 (Bailer), Second Division Award 3298 (Ferguson), and Fourth Division Award 1657 (Weston), as well as 8318 (Daugherty), and Interpretation No. 1 to Award 9578 (Johnson).

/s/ **R. A. DeRossett**
R. A. DeRossett

/s/ **R. E. Black**
R. E. Black

/s/ **W. F. Euker**
W. F. Euker

/s/ **G. L. Naylor**
G. L. Naylor

/s/ **O. B. Sayers**
O. B. Sayers

**LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT
TO AWARD 10948, DOCKET CL-10122**

It is difficult to comprehend how the Carrier Members can disagree with the conclusion of the majority.

The record plainly states that the 60-day time limit began April 11, 1957 and expired on June 9, 1957. The Bureau's letter allegedly declining the claim was dated June 12, 1957 and received by the General Chairman subsequent thereto.

Article V(a) provides in part that "If not so notified, the claim * * * shall be allowed as presented * * *." See Third Division Awards 6361 (McMahon), 6789 (Shake), 9933 (Weston), 10500 (Hall), and 10576 (LaBelle).

The Statement of Claim, facts of record and governing rule are all clear, concise and free of ambiguity and the decision properly coincides.

/s/ **C. E. Kief,**
C. E. Kief, Labor Member

December 12, 1962