

Award No. 11291

Docket No. CL-10107

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier reimburse Miss Margaret Stack, Clerk, Local Agent's Office, East St. Louis, Illinois, the difference between pro rata rate and over-time rate for services performed on her regular assignment on Saturday of each week and a day's pay at pro rata rate for Monday of each week, both retroactive to September 1, 1949, until the rule violation is corrected, account Carrier's failure to handle her claim within the time provided for in Article V-2 of the August 21, 1954, National Agreement.

EMPLOYEES' STATEMENT OF FACTS: Miss Margaret Stack, East St. Louis, Illinois, is regularly assigned to the position of Utility Clerk-Steno, hours 7:00 A. M., to 3:00 P. M., Tuesday through Saturday, rest days Sunday and Monday. No regular relief assignment was established on September 1, 1949, nor subsequent to that date to perform work on her rest days of Sunday and Monday, nor is the work of her position performed by an unassigned employe on her rest days. Carrier, therefore, considered her position as one on which work is required only five days each week.

Claim was originated by Division Chairman C. F. Hill with Mr. J. L. Humphreys, Superintendent, Pine Bluff, Arkansas, on July 12, 1952, and was declined on September 8, 1952. (Employees' Exhibits A-1 and A-2)

Claim was appealed by the General Chairman to Mr. F. P. Lee, Assistant Manager Personnel, Tyler, Texas, on March 24, 1953. (Employees' Exhibit B)

On May 28, 1953, after more than two months had elapsed without a decision from Mr. Lee, claim was appealed to Mr. L. C. Albert, Manager Personnel, Tyler, who was traced for a decision on August 14, 1953. (Employees' Exhibits C-1 and C-2)

On August 20, 1953, almost three months after the claim had been appealed to Manager Personnel Albert, Mr. Lee declined our claim. Eight days

1. The Manager Personnel in conference in September 1953, ruled on all of the evidence the Employees had presented.

2. The General Chairman's statement that he would secure further information was properly taken to mean that he would present further evidence if he desired further ruling in the matter.

3. The case was not open and pending on January 1, 1955, and the Carrier was justified in considering it closed, due to the length of time which had elapsed since the conference, without any further handling by the General Chairman.

4. The Employees by their refusal to advise the Carrier that they considered this case open, in response to the inquiry of February 14th, classified it as closed, and are estopped to later claim the contrary.

5. Under the circumstances involved, the blanket denial in letter February 25, 1955 constituted a ruling within the meaning of Section 2, Article V, on this as well as any other case which the Employees may have considered open and refused to reveal such fact.

In conclusion the Carrier respectfully submits that the facts show plainly that there is no basis for the claim, and requests that the claim be denied.

All data herein has been presented to representatives of the Employees in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here before us is on behalf of Margaret Stack and as alleged, retroactive to September 1, 1949. It is contended that Carrier failed to handle such claim under the provisions of Article V-2 of the Time Limit Rule Agreement made August 21, 1954, and effective January 1, 1955.

Carrier relies on the result of an oral conference had between the parties on September 16, 1953. Carrier contends that at such conference the General Chairman, made the statement that he would advise Carrier after he secured additional information concerning said claim. Carrier takes the position that by such statement by the General Chairman, inferred that further consideration of the claim would depend upon further information being furnished Carrier, in support of the claim.

Further, Carrier relies on the contents of its letter to the General Chairman, at which time it requested information concerning claims filed or appealed prior to January 1, 1955, which may have been overlooked, or on any claim or grievance which Carrier had not made reply or decision. Such letter of February 14, 1955, was not replied to by the General Chairman. Again on February 25, 1955, Carrier again called attention by letter, that it had received no reply to its letter of February 14th, and in addition advised that all claims pending prior to January 1, 1955 were denied, on which they had not received a reply to the letter of the 14th.

The issue before this Board in the instant case is, did Carrier handle the claim within the provisions of the Time Limit Rule, as effective January 1, 1955, in denying such claim as provided in Article V-2 of such rule?

The record shows that no further action was taken on this claim following the conference on the claim September 16, 1953, by either the Carrier or the Organization. On February 14 and 25, 1955, Carrier wrote the foregoing referred to letters to the General Chairman. Such letters were not written with reference to the specific claim here, but did refer to any claims, grievances or appeals of claims prior to January 1, 1955, and referred to Carrier's request for information on any pending claims on which the Organization had not received Carrier's reply or decision previously. Further the record here does show that the Organization showed no further interest in the claim until its letter of March 7, 1955 to Carrier, at which time the Organization asserted it rejected the contents of Carrier's letter of February 25, 1955, as a denial of the claim here, more than sixty days following the effective date of the Time Limit Rule. There is nothing in the record to show such claim was actively handled following the conference. The Railway Labor Act, provides in Title 1, Section 2(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions, (5) provides for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. It appears here that both parties showed a lack of cooperation in the handling of this claim, and certainly is not conducive to a prompt and orderly handling of the disputes as required by the Railway Labor Act.

After a thorough review of the record here, and the foregoing Opinion, we conclude that circumstances surrounding the writing of Carrier's letter of February 25, 1955, and its incorporation of a denial in such letter, is sufficient here for denial of the claim, in view of the provision of Section 2, Article V of the Time Limit Rule, on February 25, 1955. We are in accord with the principles as set out by this Board in Awards Nos. 8680 and 10368, as the same are applicable here. The evidence and record is not sufficient to support a sustaining award.

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 did not violate the Agreement.

AWARD

Claim denied 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 April, 1963.