

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned the work of reconstructing or remodeling the Galewood Freight Transfer House to a General Contractor.

(2) The Carrier's Chief Carpenter failed to comply with the procedural requirements outlined in Paragraph 1 (a) of Article V of the August 21, 1954 Agreement in his handling of the claim which was presented to him on October 23, 1956.

(3) Because of the violations referred to in Parts (1) and (2) of this claim, the Carrier now be required to allow the claim which was presented and appealed — that is — each employe of the B & B Department in the Chicago Terminal be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in reconstructing or remodeling the Galewood Freight Transfer House.

EMPLOYES' STATEMENT OF FACTS: Commencing on October 1, 1956, the work of reconstructing or remodeling the Galewood Freight House at Chicago, Illinois was assigned to and performed by a General Contractor.

The work consisted of the dismantling of the second story office portion; the lowering and securing of the existing roof structure to the remaining one story portion of the building.

The instant claim was initially presented and appealed as follows:

OPINION OF BOARD: Petitioner claims that Carrier failed, "within 60 days from the date" the claim was filed, to notify Petitioner "in writing of the reasons for such disallowance." Further, Petitioner claims that this constitutes a failure to comply with the mandatory provisions of Article V, 1. (a) of the National Agreement of August 21, 1954; and, again referring to Article V, 1. (a), the claim "shall be allowed as presented." If the Petitioner's claim in this respect is well founded this Board, by mandate of Article V, 1. (a), must allow the claim, as presented, without consideration of the merits.

The claim was first presented to Carrier on October 23, 1956. It prays for "pay for B&B crew 'B' in the Chicago Terminals. On November 20, 1956, Petitioner amended the claim "claiming pay for the B&B men in the Chicago Terminal."

Article V, 1 (a) of the National Agreement does not estop a Claimant from amending a claim presented provided it is done so "within 60 days from the date of the occurrence on which the claim or grievance is based." However, if the claim as first filed is amended, within the time allowed, the 60 days permitted within which a Carrier may disallow, giving in writing "the reasons for such disallowance", tolls from the date of amendment — not from the date of the claim as first filed.

To effectuate compliance with Article V of the National Agreement, Carrier wrote the following, under date of December 1, 1954, to Petitioner's General Chairman:

"In behalf of employes occupying positions represented by your Organization, the officers of the Carrier authorized to receive same, in the first instance and on appeal, shall be the following, in the order indicated:

"Class of Employes	Carrier Officer Authorized to Receive Claim in First Instance	Carrier Officer Authorized to Receive Claim On First Appeal	Carrier Officer Authorized to Receive Claim On Last Appeal
.
Division B&B Forces	Chief Carpenter	Superintendent	Asst. to V.P.(L.E.) or Asst. to Genl. Mgr. (L.W.) . . ."

Pursuant to Carrier's designation of its officers to handle claims, quoted above, Petitioner filed its original and amended claim with Carrier's Chief Carpenter.

Under date of November 27, 1956, the Chief Carpenter wrote Petitioner:

"Your letter of November 20, 1956 in regard to claims for work done at Galewood Freight House.

"I have forwarded your letter to Mr. N. E. Smith at Bensenville for further handling, and you can expect a reply from him in the near future."

The record reveals that Mr. N. E. Smith was Carrier's Division Engineer.

Carrier's Division Engineer had not been designated by it to handle claims.

Petitioner has the right to rely upon Carrier's freely made designations of Carrier's representatives authorized to process claims from inception through appeals on the property. Consequently, any decision, relative to the claim, communicated to Petitioner by the Division Engineer, is not material.

Carrier contends that Petitioner waived action by the Chief Carpenter when it wrote to Carrier's Superintendent, under date of December 4, 1956, that the Chief Carpenter's "decision is being rejected" and "we are referring the matter to your office." Since the only "decision" made by the Chief Carpenter was to refer the matter to the Division Engineer, we conclude that it was that "decision" that Petitioner rejected.

A waiver of a collective bargaining contract right cannot be found in the absence of a preponderance of the evidence, clearly and convincingly, supporting such a finding. We find no such evidence in this record.

Under date of January 17, 1957 — within 60 days from the date of the amended claim — the Chief Carpenter wrote Petitioner:

"In reference to your letter of November 20, 1956 claiming time for Chicago Terminal B&B men for work done by Wolfes Jensen Company at Galewood Freight House platform, the claim is denied."

Petitioner received no further communications from the Chief Carpenter. Thus, the record stands uncontroverted that the Chief Carpenter did not notify Petitioner "in writing," within 60 days from the date the amended claim was filed, "the reasons for such disallowance" as required by Article V, 1. (a) of the National Agreement of August 21, 1954. Such being the facts we are compelled by Article V, 1. (a) to sustain the claim "as presented."

Carrier has attacked the efficacy of the claim for failure to name "the employe involved." It cites Article V, 1. (a) in support. Since this defense was not stated by Carrier "in writing," as a reason for disallowance of the amended claim, within 60 days of the filing, it is untimely advanced.

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 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

The Carrier failed to satisfy the requirements of Article V, 1. (a) of the National Agreement of August 21, 1954, in that it did not notify Petitioner in

writing, within 60 days after date of the filing of the amended claim, herein, the reasons for Carrier's disallowance of the claim; and, we are required, therefore, to sustain the claim "as presented."

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 26th day of April 1963.