

Award No. 11568
Docket No. TE-9748

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago & Eastern Illinois Railroad that:

1. Carrier violated agreement as follows:

On October 6, 1955, H. H. Metz, Local Chairman, presented in writing, in due form, in apt time and in the usual manner to W. R. Johnson, Chief Dispatcher, the officer of Carrier authorized to receive same, claim for H. E. Perryman, in the sum of \$119.75 for reimbursement of out-of-pocket expenses incurred by him during the month of August, 1955. Carrier officer (W. R. Johnson) failed to notify the said H. H. Metz, representative of employe, in writing, within sixty (60) days from October 6, 1955, as provided in Article V, August 21, 1954 Agreement, of allowance or reasons for dis-allowance of the claim; thereupon due demand was made that claim be allowed as presented in accordance with the provisions of such rule. Carrier failed and refused to comply therewith.

2. Carrier shall be required to pay H. E. Perryman the sum of \$119.75 as set forth in claim filed October 6, 1955, in accordance with Article V, August 21, 1954 Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the parties to this dispute. The agreements are on file with this Division and are by reference included in this submission as though set out herein word for word.

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

On October 6, 1955, H. H. Metz as Local Chairman filed the following claim with Mr. W. R. Johnson, Chief Dispatcher:

time limit rule. A ruling in favor of Petitioner requires a holding that certain company officers are guilty of falsifying the record.

Petitioner alleges that decision of Chief Dispatcher Johnson dated September 9, 1955 declining claim was appealed to that officer by the Local Chairman in a letter allegedly posted on October 6, 1955. The Carrier submits that if the letter referred to was in fact addressed to the Chief Dispatcher, it was never received in his office.

In discussion in conference upon appeal to the Superintendent the Acting General Chairman implied that the Chief Dispatcher was misrepresenting the truth as to receipt of the letter in question, citing certain statements allegedly made to that effect by the clerk in the office of the Chief Dispatcher. After investigation, the Superintendent advised that the General Chairman in letter dated May 3, 1956 (Carrier's Exhibit "C") that no one in the office recalled having seen the letter in question. This is supported by note appended to the file by Clerk Cartwright on December 15, 1955, at the time the question first arose. (Carrier's Exhibit "D")

The rule requires that appeal from decision of company officer must be made within prescribed time limits. The appeal must be made in writing and must be received by the proper company officer. A delay between time of posting and receipt of appeal might well be overlooked, however, in the absence of any concrete evidence that attempt was made to comply with the time limit rule the claim must be considered abandoned. The facts are that in the instant case appeal was not received by the proper company officer within the prescribed time limits and the claim is therefore outlawed under the time limit rule.

Without prejudice to Carrier's position that the time limit was permitted to lapse in this case, Carrier submits that the claim is entirely without merit and without support under the agreement rules. Extra Operator Perryman filed a claim for reimbursement of personal expenses incurred while filling a vacancy at Thornton. The only rule in the current agreement providing for reimbursement of personal expenses in Rule 33, quoted hereinbelow:

"Rule 33

"Regularly assigned telegraphers will not be required to perform relief work except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in the regular compensation, shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assignments."

This rule, it will be observed, confines the payment of personal expenses to "regularly assigned telegraphers" required to perform relief work. Claimant Perryman was not a regularly assigned telegrapher—he was an extra telegrapher—whose primary function is to perform relief work. Extra telegraphers are not customarily reimbursed for personal expenses nor are such payments admissible under the rule. The claim is therefore without merit under the agreement rules here controlling.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, H. E. Perryman, submitted an expense

account for \$119.75 for the month of August, 1955, for out-of-pocket expenses. On September 9th, the chief dispatcher disallowed the account, as follows:

"Mr. H. E. Perryman

"Your G-18 for August 1955 is being disallowed account you being an Extra man. If you were regular assigned and was worked on another job you would be allowed the expenses.

/s/ W. R. JOHNSON
W. R. Johnson"

The Claimants set forth that on October 6th, 1955, H. H. Metz, the local Chairman, presented in writing, an appeal from the decision rendered September 9th, the first paragraph of the letter of October 6th addressed to W. R. Johnson, Chief Dispatcher, reads as follows:

"This is an appeal from your decision rendered September 9, 1955, to Mr. H. E. Perryman wherein you disallowed his expense account filed on C&EI form G-18. This account was for the month of August 1955."

The Carrier denies receipt of the letter of October 6th, and on December 12, 1955, Mr. H. H. Metz, by letter to W. R. Johnson, Chief Dispatcher, wrote as follows:

"Under date of October 6, 1955, I appealed from your decision of September 9, 1955 to Mr. H. E. Perryman, wherein you denied his claim for expenses during the month of August 1955.

"Please be advised that, as of this date, no reply has been received by me and that under the provisions of Article V, paragraph (a) of the August 21, 1954 agreement this claim shall now be allowed as presented.

"The expense account which Mr. Perryman submitted to you in duplicate and which you returned to him (attached to your letter to him of September 9th) is now in my possession and will be promptly delivered to you upon request. Please advise when you want this expense account delivered.

"Kindly advise the payroll period in which payment will be allowed.

"Yours truly,

/s/ H. H. METZ
H. H. Metz, L.C.Dist. No. 1."

There was considerable additional handling on the property, but the matter before us is an interpretation of the Time Limit Rule, same being Article V(a) of the August 21, 1954 Agreement, which reads 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 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."

Here the Carrier denies having received the claim contained in the letter of October 6th. Claimant alleges that there is a presumption of receipt and the docket contains a certificate that the October 6th claim was placed in the United States mail, properly addressed, and with proper postage affixed. There are many instances in which such a mailing would constitute all that was required in the way of handling. There is a presumption of receipt, and it has long been the custom of the parties to handle matters such as this by mail. However, presumptions can only endure until there is an adequate denial. The Carrier has so denied receipt here.

An examination of Article V(a) shows that the requirement is that the claim or grievance must be presented. The method of presentation is the choice of the Claimant, and with this choice goes the responsibility that it is adequate. The burden is mutual. Not only must the griever adequately prove presentation of his claim, but should the same be denied, the Carrier must also adequately prove notification of denial. To allow a claim without a consideration of the merits, on a presumption that a letter containing the claim was delivered, when the receipt has been denied, could create chaos. Possibly this could have been in the minds of the drafters of the Agreement. Whatever was the intention, the wording of the Agreement is absolute and the burden of proving presentation is on the Petitioner. This burden has not been sustained, and the claim will therefore be denied (See Award 11505).

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

That the claim will be denied in accord with the Opinion above.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.