

Award No. 11575

Docket No. CL-11558

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated Article V of the August 21, 1954 Agreement when it failed to deny claims within the 60-day period provided therein and because of such violation, shall now be required to allow the following claims as presented:

1. Mr. E. McCauley, Chief Record Clerk at Oak Point, New York for two hours' per day at punitive rate of \$3.586 per hour, five days a week, commencing on April 25, 1958, and to continue until Sept. 18, 1958,

2. Mr. J. Richy, Relief Record Clerk at Oak Point shall now be compensated for 2 hours per day at punitive rate of \$3.586 per hour, 2 days per week commencing on April 25, 1958, and to continue until Sept. 18, 1958,

3. Mr. H. Fischman, Chief Car Service Clerk, Freight Dept., Harlem River, shall now be compensated for 2 hours per day at punitive rate of \$3.486 per hour, one day per week, commencing June 4, 1958 and to continue until Sept. 15, 1958,

4. Miss B. Schmidt, Car Service Clerk, Freight Dept., Harlem River, shall now be compensated for 2 hours per day at punitive rate of \$3.48 per hour, 2 hours per day, 5 days per week, from June 4, 1958 to continue until Sept. 15, 1958.

EMPLOYEES' STATEMENT OF FACTS: A letter was written by Local Chairman, Harold F. Hughes and mailed from New York City on Thursday, Aug. 28, 1959, addressed to Mr. K. P. Young, Supt., at New Haven, Conn., appealing from decision of Mr. A. W. Olsson, Terminal Supt., N.Y., dated Aug. 1, 1958, copy attached as Exhibit No. 1.

This letter was acknowledged and decision rendered by Supt. Young, his letter dated Oct. 30, 1958, envelope postmarked Friday, Oct. 31, 1958, for-

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the contention of the Petitioner that on Thursday, August 28, 1958, a letter was written by the Local Chairman and mailed from New York City, addressed to the Superintendent at New Haven, Connecticut, appealing from the decision of the Terminal Superintendent, New York, on the claims of the employees named in the Statement of Claim; that this letter was acknowledged by the Superintendent and a decision rendered later by him, his letter bearing date of October 30, 1958, the envelope in which it was contained being postmarked Friday, October 31, 1958, and forwarded to the Local Chairman at New York, New York. It is contended by the Petitioner that the Superintendent failed to render a decision disallowing the claims within sixty days in accordance with the requirements of Rule 21 of the Agreement (this is Article V of the August 21, 1954, National Agreement).

The Carrier asserts that the denial decision of the claims submitted by the Petitioner was mailed to the Petitioner on August 1, 1958; that, under date of August 28, 1958, the Local Chairman, without notifying the Terminal Superintendent in writing of the rejection of his decision as required by the Agreement, wrote to the Superintendent, New Haven Division, appealing the decision of August 1 rendered by the Terminal Superintendent. Carrier further maintains that this communication, dated August 28, was received and filed in the office of the Superintendent on Tuesday, September 2nd, upon the reopening of the office after the Labor Day holiday, the receipt of which was acknowledged on September 3. The claim was disallowed by the Superintendent on October 30, 1958, and the envelope bearing his decision was postmarked October 31, 1958, which Carrier contends is within the sixty day limitation provision of Article V, National Agreement of August 21, 1954.

Article V, 1 (a) of the August 21, 1954, National Agreement provides:

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

* * * * *

"(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer. . . ."

It is noteworthy that the letter written by Petitioner, dated August 28, was not received by the officer of the Carrier until September 2nd, which is understandable, as his office was closed due to the Labor Day holiday from Friday until Tuesday, and by comparison the letter by Carrier's officer dis-

allowing the claim posted on Friday, October 31, was not received by the Petitioner until November 2nd, as Saturday and Sunday had intervened.

It is readily apparent, therefore, that the length of time consumed while the appeal or the denial decision was not in transit could not be chargeable to either of the parties. See Award 10490.

Article V of the Agreement dated August 21, 1954, was agreed to for the purpose of expediting the progressing of claims or grievances. With that in mind, certain time limits were provided for. In 1 (a) of Article V it is quite evident that it was the intention of the parties that the 60 day time limit provided for would start to run from the day the claim was received and filed by the Carrier—that, obviously, would be the first time that the officer of the Carrier would have knowledge of it. Proceeding further in our consideration of 1 (a), it clearly appears that the Carrier must stop the running of the time limit of 60 days by notifying within the 60 day limit whoever filed the claim of the disallowance of the same. That can be accomplished by mailing or posting the notice required within 60 days of the date that the claim was received. The employee presenting the claim then, under 1 (b) would have 60 days to appeal from the officer's decision from the date of the receipt of the notice of disallowance.

Applied to the facts in the instant matter—Carrier received the claim on September 2, 1958 (there is nothing in the record which would justify a finding that it had been received any earlier); the officer of the Carrier then mailed or posted notice of the disallowance of the claim on October 31, 1958, within the 60 day limitation period allowed for such notice in Article V, 1 (a). Petitioner received the notice of disallowance on November 2, 1958 and under 1 (b) would have had 60 days' time to have appealed from the notice of disallowance.

For the foregoing reasons we must find that there has been no violation of the Agreement. Having arrived at this conclusion, it is unnecessary for us to consider Carrier's proposal that the claim is invalid because of the Petitioner's alleged failure to notify the Terminal Superintendent of the rejection of his decision.

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 has not been violated.

AWARD

Claim dismissed.

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.