Award No. 12391
Docket No. MW-11469

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., 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 Agreement when it failed and refused to allow, by default, the claim presented to and filed with Mr. Ornburn by General Chairman James in a letter dated April 7, 1958 (representing a claim for travel time in behalf of Steel Erectors Edwin L. Coon and Bert M. Edwards for March 1 and 2, 1958) and which was not disallowed by Mr. Ornburn until his letter of October 7, 1958.

(2) The claim as presented and filed by General Chairman James in the aforementioned letter of April 7, 1958 now be allowed and paid as required under the defaulting provisions of Section 1 (a) of Article V of the National Agreement of August 21, 1954.

EMPLOYES' STATEMENT OF FACTS: The factual situation surrounding the presentation and handling of the subject claim is set forth in correspondence reading:

"April 7, 1958

Mr. B. J. Ornburn
Asst. Chief Engineer–Structures
C. M. St. P. & P. Railroad
898 Union Station Building
Chicago 6, Illinois

Dear Sir:

The steel bridge crew outfit supervised by Foreman Floyd T. Wilson was billed out of Egan, S. D., on February 25, 1958 for its destination of Omro, Wisconsin. The outfit arrived at Omro on Monday, March 3.

of the case. Without prejudice to the position of the Carrier that the claim is outlawed and barred from further handling for reasons thoroughly outlined in this submission, the Carrier will now set forth its position with respect to the merits of the case.

The claim was submitted for travel time by the claimant employes when they accompanied the boarding car from Egan, South Dakota, to Omro, Wisconsin. The claim dates were March 1 and 2, 1958, Saturday and Sunday, days on which claimants do not normally perform service. The claimants were not instructed to accompany the boarding car, but did so, of their own volition. The travel time they claim was that provided for employes, "required by the Management," to travel with boarding cars. The applicable rule in the currently effective MofW schedule reads:

"RULE 26. TRAVEL TIME.

(a) Employes required by the Management to travel on or off their assigned territory, with boarding cars, will be allowed straight time traveling during regular working hours, and for rest days and holidays during hours established for work periods on other days. When traveling with boarding cars after work period hours, the only time allowed will be for actual time traveling after 10 P. M. and before 6 A. M., and at half time rate."

Inasmuch as the claimants were not directed by the Management to travel with the boarding cars but, instead, merely rode in those cars of their own accord and for their own convenience, the claim was not proper or supported by the mentioned aforequoted schedule rule. The claimant employes were actually allowed payment of 4 hours and 5 minutes' travel time in error on March 1, 1958. That payment is indicated by notations on the March 1, 1958, time slip attached as part of Carrier's Exhibit A.

It was not necessary or required for the claimants to travel with the boarding car as other transportation, i.e., passenger train service, was available.

For the reasons set forth in this submission, it is the position of the Carrier that the claim is not only without merit, but is outlawed and barred from further handling on time limit on claims provisions of the effective Agreement, and the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Does the filling out and filing of time slips on behalf of employes in his crew by the Foreman of the Claimant employes constitute a claim within the meaning of Article V of the applicable agreement (relating to time limits for processing claims)?

We hold yes.

Article V insofar as is here pertinent 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."

The sequence of events which gave rise to this question is:

March 1 and 2 — Time slips submitted to Assistant Chief Engineer Structures.

March 5 — Assistant Chief Engineer by letter to Foreman declined to pay claims.

April 7 — General Chairman of BMWE by letter to Assistant Chief Engineer makes claim for time.

September 15 — General Chairman by letter inquires as to status of letter of April 7 claim.

October 21 — Assistant Chief Engineer asserts his letter of March 5 denied claims and asserts claims are now barred because of lack of prosecution.

The question thus boils down to when was the claim presented. If on March 1 and 2, then the letter of March 5 denied it and the 60 day time for appeal to the next highest officer began running.

If on April 7, then the letter of October 21 was not a timely denial of the claim.

We are of the opinion that the time slip was the claim and the reply denied it. The claim (time slip) was in writing, on behalf (by foreman who is covered by the applicable agreement) of the employes involved to the officer of the Carrier authorized to receive the same.

Aside from complying with the language of the rule, this result is better calculated to speed the processing of claims and reduce some of the work incident to processing of the claims.

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

Claimant failed to comply with the time requirements of the appeal procedure.

AWARD

Appeal dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of April 1964.