

Award No. 12472
Docket No. TE-10737

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh & West Virginia Railway, that:

1. On February 18, 1957, T. A. Neelan, duly authorized representative, The Order of Railroad Telegraphers, at the time and in the manner provided for in the collective bargaining agreement filed claim with General Superintendent W. E. Robinholt, duly authorized officer of carrier to receive such claim as follows:

"Herewith claim in favor of a senior idle extra operator for eight hours' pay, at straight time rate, and in the event there is no senior extra operator available then eight hours at time and one-half rate for senior idle employe on the Telegraphers' Seniority Roster account of violation of Article 1 Scope of our agreement by an employe not covered by same at Connellsville Interchange.

At 1:01 P.M., February 16, 1957, Conductor H. W. Bigleman on No. 99 performed operator's work as follows:

'Called Chief Dispatcher and requested messages and chief said "15 Westbound at Sudan." Conductor said "what are they." Chief replied "I don't know will ring Sudan"—Sudan answered and Conductor Bigleman said "go ahead with consist.'

Agent sent the following:

'2 Rods BX — 9 Billets BX — 4 Billets P&LE — 1 mty tank BX — a total of 15-1-1432.

Conductor said OK and advised chief he would have 33.50-3554 — 2lds for Monessen 150 Tons — balance for Rook — will take Mifflin load to Rook.'

At 1:24 P.M. conductor came on dispatcher phone and advised dispatcher he had copied consist of pick up at Sudan and that he would have 83 cars out of Connellsville and that their train was pulling in yard now.

Claim also made for all subsequent violations at this point.

Please advise if you will honor this claim."

2. On March 11, 1957, Mr. Robinholt declined the claim. On March 30, his decision was rejected and appeal taken to Mr. Charles H. Manoogian, Manager of Labor Relations, the duly authorized carrier officer to receive such appeal. No declination or notice of disallowance of the claim was received from Mr. Manoogian by Mr. Neelan, employe representative filing same until September 13, 1957.

3. On June 8, 1957, due and proper demand was made by Mr. Neelan upon Mr. Manoogian to allow the claim as provided in Article V of Section 1 (a) August 21, 1954 Agreement.

4. Carrier violated Article V, August 21, 1954 Agreement when its officer C. H. Manoogian failed and refused to allow the claim as presented on the request of Mr. Neelan dated June 8, 1957.

5. Carrier shall now be required to allow the claim as presented and to pay to the employes all sums to which they are entitled under the claim as filed and presented.

EMPLOYES' STATEMENT OF FACTS: There are in full force and effect collective bargaining agreements entered into by and between the Pittsburgh & West Virginia Railway Company hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The agreements are on file with this Division and are, by reference, incorporated in this submission as though set out herein word for word.

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

1. On the second day of February, 1957, General Chairman T. A. Neelan filed protest with General Superintendent W. E. Robinholt with regard to employes not covered by Telegraphers' Agreement performing work at Connellsville Interchange. This letter is shown as ORT Exhibit No. 1.

2. On February 18, 1957, General Chairman Neelan filed formal claim with General Superintendent W. E. Robinholt as follows:

"Herewith claim in favor of a senior idle extra operator for eight hours pay, at straight time rate, and in the event there is no senior extra operator available, then eight hours at time and one half for senior idle employe on the Telegraphers Seniority Roster account of violation of Article 1 Scope of our agreement by an employe not covered by same at Connellsville Interchange.

At 1:01 P.M., February 16, 1957, Conductor H. W. Bigleman on No. 99 performed operator's work as follows:

grievance adjustment should not be unduly cluttered. If conversation were deemed necessary on the subject, conversations were had. But mere dissatisfaction with the results of the conversation does not give rise to a supportable claim.

Finally, it must be emphasized that the Claim (improper as it is on other grounds) was improperly progressed on the property.

The Time Limit Rule of August 21, 1954, requires that

"If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, * * *

Please note that the rule does not require the representative to be notified in writing of the rejection of his decision "at that time," or "by a copy of the letter of appeal" or "by any other device other than a direct letter to the representative whose decision is rejected."

The rule requires that the representative be notified in writing within that time — that is, within sixty (60) days and prior to the appeal. No interpretation can be reached except that a definite letter of rejection must be sent to the representative. Such was not done in this instance — and the Claim must "be considered closed."

Furthermore, it is extremely doubtful that the Time Limit Rule is of any significance in this proceeding. The Time Limit Rule is a rule of procedure — which procedure need be followed only when a claim having a color of substance is involved. The Carrier feels that procedural rules should not be used to rectify or substitute for substantive deficiency.

In summary, the Carrier urges that the action complained of is not of the Carrier's doing, that at most it is trivial and unimportant conduct of an employe for his personal benefit, that it is not in any way in violation of Organization's rights, and should not here be considered favorably. The Carrier further urges that the Organization has improperly progressed a baseless claim, capriciously and arbitrarily. The claim should be denied.

OPINION OF BOARD: This claim is presented on behalf of the Organization for a senior idle extra operator for eight hours' pay at the straight time rate, and in the event there is no senior extra operator available, then eight hours at time and one-half for a senior idle employe on the Telegraphers Seniority Roster, because of a violation of the Scope Rule in the current agreement.

At 1:01 P.M., February 16, 1957, a conductor on Train No. 99 is alleged to have performed operator's work within the Scope Rule, Connellsville, Pennsylvania. On March 11, 1957, the Carrier's Superintendent denied the claim. On March 30, 1957, the Organization appealed this decision to the Manager of Labor Relations, the highest officer in charge. No reply was received from the Manager of Labor Relations denying or allowing the claim as presented. Repeated efforts on the part of the Claimants to obtain a decision on the claim proved fruitless until September 13, 1957, when by letter the claim was denied.

It was the contention of the Organization that the Manager of Labor Relations had until May 29, 1957, in which to render his written decision as provided for in Article V, of the Agreement. The pertinent provisions in Article V are as follows:

" . . . 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 . . . in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, . . ."

The Carrier replied on the merits, contending that the Scope Rule was not violated. The Conductor's actions were strictly of his own volition and neither ordered or directed by the Carrier. In addition, this work had been performed in the past by both Conductors or Clerks, and no proof of monetary loss by employees had been alleged or proven. In reply to the violation of Article V of the Rules, the Carrier contended that it was doubtful that the Time Limit Rule is of any significance in this proceedings. Such procedure need only be followed when a claim has a color of substance which is lacking in this dispute.

A review of the record, supporting evidence and the Awards of this Board reveals that the contentions of the Complainant are well taken. The Rules, as exemplified in Article V, requires the Carrier to respond within 60 days from the date the claim or grievance is filed by notifying the Claimant or his representative in writing, the reasons for the disallowance of such claim or grievance. This requirement is mandatory, not a matter of choice, or dependent upon the type or quality of the claim. This notification in writing within 60 days from the date the claim or grievance was filed was not done in this dispute.

Thus, the Agreement was violated, as the contentions of the Carrier are not supported by the Rules.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12472,
DOCKET TE-10737 — (Referee Kane)**

We demur to this award because the Referee failed to clearly state his decision with more particularity. The award on its face is ambiguous. In order to understand the decision, it is necessary to go to a subsequent award—12474, Docket TE-10739, wherein specific reference is made to the issue presented in Docket TE-10737. In Award 12474, the Majority asserts:

“The question presented in this claim is similar to the question presented in Docket No. TE-10737, TE-10738.

* * * * *

* * * Furthermore, there is no evidence in the submission as to whether this claim or claims as presented in Docket No. TE-10737, TE-10738 were violated on dates other than those enumerated in the respective claims.”

The Majority's Opinion expressed in Award 12474 as set out above, confines the decision to the specifically enumerated dates; however, they erred in not incorporating that opinion into Award 12472 properly by reference.

Therefore, as we view the decision in Award 12472, coupled with the Opinion and Findings in Award 12474, the claim was sustained, but only for the dates specifically enumerated, and no others.

The entire problem could have been avoided by a citation of **Second Division Award 3777** (Stone), where the same ultimate conclusion was reached.

We dissent because this Award, standing alone, lacks a clear incisive decision on the issue presented.

W. F. Euker
R. E. Black
R. A. DeRossett
G. L. Naylor
W. M. Roberts