

Award No. 12474

Docket No. TE-10739

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 December 31, 1956, 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 designated to receive such claim as follows:

Claim of the General Committee of the Order of Railroad Telegraphers on The Pittsburgh and West Virginia Railway Company, that

(1) The Carrier violated the 40 Hour Week Agreement Article XIX (M) — Service on Rest Days — in the manner in which relief was furnished Agents — Operators L. F. Panizzi, Clairton, Pa., J. D. Polen, Monessen, Pa., and B. F. Liptak, Sudan, Pa. on their assigned rest days beginning on November 4th, 1956 and

(2) The Carrier shall compensate the employees (listed below), at the rate of time and one-half for each rest day they have been improperly relieved beginning on November 4th, 1956 and for all subsequent rest days they were not properly relieved.

L. F. Panizzi — November 4, 11, 18, 25, December 2, 9, 1956.

J. D. Polen — November 6, 7, 13, 14, 20, 21, 27, 28, December 4, 5, 1956.

B. F. Liptak — November 8, 9, (plus one call), 15, 16, 22, 23, 29, 30, December 6, 7, 13, 14, 1956.

On November 4th, 1956, the regular assigned 2nd trick operator at Sudan, Pa., Monday thru Friday, was instructed to assume Relief Schedule No. 9 instead of using the regular assigned employees at the above locations when no extra employee was available.

2. On January 16, 1957, Mr. Robinholt declined the claim. On March 1, 1957, T. A. Neelan rejected the decision of Mr. Robinholt and appealed the claim to Mr. C. H. Manoogian, Manager of Labor Relations, duly authorized officer of carrier designated to receive such appeal. No notice was received by Mr. Neelan of disallowance of the claim within 60 days of March 1, 1957 and on June 8, 1957, he requested Mr. Manoogian to allow the claim as presented. Notwithstanding this request Mr. Manoogian did not, until September 13, 1957, in writing, decline the claim.

3. Carrier violated the provisions of Article V, August 21, 1954 Agreement in failing and refusing to allow the claim as presented.

4. Carrier shall now be required to allow the claim as presented and to compensate the employees as requested in the claim.

EMPLOYEES' 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 Employees 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 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 31st day of December, 1956, General Chairman T. A. Neelan filed claim with General Superintendent W. E. Robinholt as follows:

"Claim of the General Committee of the Order of Railroad Telegraphers on The Pittsburgh and West Virginia Railway Company, that

(1) The Carrier violated the 40 Hour Week Agreement—Article XIX (M)—Service on Rest Days—in the manner in which relief was furnished to Agents-Operators L. F. Panizzi, Clariton, Pa., J. D. Polen, Monessen, Pa., and B. F. Liptak, Sudan, Pa. on their assigned rest days beginning on November 4, 1956 and

(2) The Carrier shall compensate the employees (listed below), at the rate of time and one-half for each rest day they have been improperly relieved beginning on November 4, 1956 and for all subsequent rest days they were not properly relieved.

L. F. Panizzi — November 4, 11, 18, 25, December 2, 9, 1956.

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: The Order of Railroad Telegraphers through its representatives filed this claim on the 31st day of December, 1956. The claim alleges that the Carrier violated the 40 Hour Week Agreement Article XIX (M) Service on Rest Days. It appears in the record that three Agent-Operators at Clairton, Pennsylvania, were improperly relieved on their rest day beginning November 4, 1956. On November 4, 1956 the regular assigned 2nd trick operator at Sudan, Pennsylvania, Monday thru Friday, was instructed to assume Relief Schedule No. 9 instead of using the regular assigned employes at the above location for the relief work. No extra employes were available to perform this work at this location.

The claim as presented alleged a violation of Article XIX (M) and that compensation be paid to the Claimants at the rate of time and one-half for each rest day they had been improperly relieved. However, as the claim progressed a violation of Article V, the Time Limit Rule was alleged by the Claimants.

In support of its contentions the Carrier denied that Rule XIX (M) applied to this situation as that Rule applied only to situations where service was required on rest days and the manner in which such service would be compensated for. The claim presented here is in fact a claim for failure to assign on rest days, rather than, assignment on rest days. Thus this Rule does not apply.

In reply to the allegation that Article V had been violated the Carrier did not deny it but contended it only applied when the claim had substance. Furthermore, the Claimant failed to notify the Superintendent after denial of the appeal to the Manager of Labor Relations.

"ARTICLE V

* * * * *

(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.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 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, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose."

The Organization, as in Docket No. TE-10737 and TE-10738, where the same parties were involved and the same issues raised, pursued in its submission the violation of Article V, Time Limit Rule. In furtherance of this position the facts are as follows: On the 31st of December, 1956 the claim was filed with the Carrier's Superintendent. On January 16, 1957, the claim was denied. On March 1, 1957, the claim was appealed by the Claimant to the Manager of Labor Relations with a copy of such appeal being sent to the Superintendent. On September 13, 1957, the Manager of Labor Relations denied the claim. It was the Organization's contention that the 60 days period for denying the claim expired on or about May 1, 1957. However, the denial of the claim was not made by the Carrier until a letter of denial on September 13, 1957, was sent to the Claimants. It is also alleged that the Claimants attempted to obtain a decision on this appeal prior to the above date but were unsuccessful as the Carrier refused to answer such requests. Thus Article V, of the Agreement was violated.

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

Was Article V, of the Agreement violated? Our answer is Yes. The Carrier failed to respond to the notice of Appeal within 60 days of receipt of said notice. In addition the Carrier has never denied its failure to reply to the appeal within 60 days. Furthermore, in all these Dockets no reason or explanation was given for such failure to respond. The issue of the Time Limit Rule, Article V, was raised on the property at all levels and efforts were made to obtain a decision on the appeal but such efforts proved fruitless.

Thus we are of the opinion that the Agreement was violated, specifically Article V. However, we are resolving this dispute not on the merits but rather on the procedural defects which have not been denied or explained.

Argument has been raised concerning the impact of a sustaining Award. What would the claim amount to in dollars and cents? This issue has not been raised in the submission. No issues have been raised in submission limiting the claim to any specific time. 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.

Arguments have also been raised that the claim should have been terminated on the date the claim was denied by the Manager of Labor Relations, September 13, 1957 or 60 days after the claim was filed. However, an examination of the Rules and specifically Article V, reveals no provision either expressed or implied for such interpretation, nor has such contentions been presented in the record or advanced by the parties on the property. A better theory, which does not exist in the Rules, would be for such claims at their expiration date be deemed automatically denied, if a failure to officially deny exists in the record.

Thus when no information exists in the record to bring a question to issue this Board is without jurisdiction to determine such issue. We cannot go beyond the record in our determination of the issues. See Circular No. 1 of the Rules of Procedure of the National Railroad Adjustment Board and Awards of this Board.

To raise such theories at this point in the proceedings would place us in the untenable position of advancing defenses and creating issues as to the extent of the continuity of the claim in all three Dockets when such issues were not raised in the submission.

Thus it is our opinion that such questions that have not been raised in the submission must be resolved by the parties. If a party is subsequently aggrieved then appeal to this Board.

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 in accordance with Opinion and Findings.

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' CONCURRING OPINION TO AWARD 12474, DOCKET TE-10739 (Referee Kane)

We concur in that portion of the Opinion which holds:

" * * * 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.

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