

Award No. 14354

Docket No. SG-12524

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated Article V of the August 21, 1954 Agreement when it failed to notify Local Chairman H. L. Morris of its decision within sixty (60) days of his appeal, dated September 12, 1959, of the decision of Mr. L. B. Hale, Supervisor Communications and Signals, who denied the claim on behalf of Signal Maintainer G. G. Long, Jr., for additional compensation for July 2 and 3, 1959.

(b) The Carrier now be required to compensate Signal Maintainer G. G. Long, Jr., for thirteen (13) hours at his overtime rate of pay for July 2, 1959, and three (3) hours at the double-time rate of pay for July 3, 1959, the amount involved in the original claim. (Carrier's File: G-378-14; G-378)

OPINION OF BOARD: The procedural issue to be determined in this case concerns the alleged failure of Carrier to notify Claimant of the disallowance of his claim within the time limit prescribed in Article V, Section 1 (a) of the August 21, 1954 National Non-Ops Agreement, the pertinent provisions of which are 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 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."

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes * * *

The parties agree that the merits of the dispute are not before us for determination.

The record discloses that a claim in behalf of Claimant was duly filed with Carrier's Supervisor by Employees' Local Chairman. Claim was denied and the Local Chairman filed an appeal in writing with Carrier's Superintendent on September 12, 1959. No response was allegedly received by the Local Chairman within the 60 day time limit and on November 29, 1959, he so informed Carrier's Superintendent in writing. Thereafter, on January 15, 1960, Carrier's Superintendent replied and alleged that the Claim had been denied by letter dated September 18, 1959. Employees' Local Chairman, under oath, denied receipt of the Superintendent's letter dated September 18, 1959 and Employees contend that the Claim should be allowed as presented in accordance with the provisions of Article V, Section 1 (a) of the applicable Agreement. No probate evidence was offered by Carrier in support of its assertion.

As we stated in Award 10173, "Article V, Section 1 places correlative obligations upon the parties with respect to the progression of claims." Just as Employees bear the responsibility of being able to prove that a claim is timely filed with a Carrier, so the burden of proof rests with a Carrier to prove that Employees are duly notified in writing of the reasons for disallowance. Notification connotes communication of knowledge to another of some action or event. The method of communication in the instant case was left to the discretion of the party bearing the responsibility of notification and the Carrier apparently elected to use the regular first class Mail service rendered by the Post Office Department. Had the Carrier elected to use certified or registered mail service offered by the Post Office Department, probative evidence of delivery would be available to support the Carrier's assertion.

Employees cannot be held responsible for the handling of Carrier's mail by the Post Office Department. It was the responsibility of the Carrier to be certain that the letter of disallowance was properly delivered to the Employees' Local Chairman.

Under the controlling language of Article V, Section 1 (a), Carrier is required to allow the claim as presented without consideration of the merits but this shall not constitute a precedent or waiver of the contentions of the Carrier on the merits as to other similar cases or grievances.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 28th day of April, 1966.

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