

**Award No. 14369**  
**Docket No. TE-11512**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Edward A. Lynch, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**  
**(Formerly The Order of Railroad Telegraphers)**

**THE NEW YORK CENTRAL RAILROAD COMPANY**  
**(Western District)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Western District, that:

1. The Carrier violated the terms of Article 6 of the Agreement between the parties when it failed to decline a claim within the 60 days prescribed by the rule and then refused to allow the claim as presented in accordance with that rule.

2. Carrier be required to increase the hourly rate of the first shift position of ticket clerk-operator at South Bend, Indiana, 27 cents per hour effective March 4, 1958 and pay that amount retroactively to each incumbent of the position on and after March 4, 1958.

3. Carrier be required to make a joint check of its records for the purpose of determining proper claimants.

**EMPLOYEES' STATEMENT OF FACTS:** At page 72 of the effective Agreement under the designation of Seniority District No. 6 are listed the following, under the direct supervision of the ticket agent:

Location	Shift	Classification	Hourly Rate	Monthly Rate
South Bend Ticket		B-N		\$450.00
	1	D	1.889	
	1	D	1.829	
	1	D	1.829	
	2	D	1.829	
	3	D	1.829	

It is obvious, therefore, that you are not willing to continue negotiations in an effort to reach a settlement that would resolve the two disputes which have been so closely related since their inception.

That being the case, we are withdrawing our offer to negotiate a change in the classification and rate of the Clerk-Operator's rate at South Bend. At the same time we reaffirm our previous decision that Article 6 was not involved and, therefore, not violated, in the handling of Local Chairman Boiko's request for an increase in the rate of the position of Clerk-Operator at South Bend. It is our further decision that the facts do not support your request for an increase in the rate of this position under the provisions of Article 20(c) of your agreement, and we are not willing to grant any increase in the rate of that position."

On May 26, 1959, the Carrier received formal notice from the Third Division advising that the Organization would file an ex parte submission of the dispute concerning an alleged violation of the Time Limit on Claims Rule, Article 6.

For reasons hereinbefore stated, the merits of this case have not been handled on the property as required by the Railway Labor Act, as amended, and the only issue before this Board for adjudication is whether or not Carrier violated the Time Limit Rule. Carrier asserts that in this case such rule was not violated as it is not applicable to a situation of this kind, i.e., a matter of negotiation.

**OPINION OF BOARD:** It is clearly evident from the record before us that the claim here involved was received by the Carrier on May 16, 1958 and the sixty days which Carrier is allowed to deny or allow the claim began to run on May 17, 1958.

It is also evident from this record that Carrier's Transportation Superintendent sent a letter dated July 14, 1958 to the Local Chairman disallowing the claim, but it was not received by him until July 17, 1958.

It was obviously two days late under Article 6 of the agreement (Article V, of the August 21, 1954 Agreement).

The Carrier being thus in default, we must examine Claimant's request that Carrier allow the rate increase sought in the claim, retroactive to March 4, 1958, in the light of the ruling of March 17, 1965 by the National Disputes Committee that the "receipt of Carrier's denial letter stops the Carrier's liability arising out of its failure to comply with Article V of the August 21, 1954 agreement." Award 13780 and Second Division Award 4853.

In this instance, compensation is due the Claimant up to the date Carrier denied the claim on its merits (July 17, 1958) or 62 days.

**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 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

That the Agreement was violated.

#### AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.