

Award No. 14603

Docket No. TE-12396

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad that:

1. On the fifth day of March, 1960, D. J. North, duly authorized representative (General Chairman), The Order of Railroad Telegraphers on the Lehigh Valley Railroad, appealed, in the usual manner, in writing, to Mr. C. L. Wagner, Chief of Personnel, the following claim:

"1. Carrier violated the agreement between the parties when and because, effective August 12, 1959, it unilaterally discontinued a daily minimum call regular to the Depew, New York, Agent-Telegrapher position and transferred work which was performed by the Depew Agent-Telegrapher on a daily call basis prior to August 12, 1959 by assigning the performance of same to employees not covered by the Telegraphers Agreement.

2. It is our further claim that the occupant of the Depew Agent-Telegrapher position, day-to-day basis, shall be allowed a minimum call (provisions of Rule 13 to apply) beginning August 12, 1959 and continuing each day thereafter until the violations complained of in this case are discontinued and such work returned to those of our class or craft at Depew."

2. That the said C. L. Wagner, duly designated officer of the Carrier to receive such appeal, failed and refused to notify the said D. J. North, in writing, within sixty days from March 5, 1960, of disallowance of the aforesaid claim.

3. That Carrier shall be required, in accordance with the provisions of Article V, August 21, 1954 Agreement, to allow the said claim as presented.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in full force and effect collective bargaining agreements entered into by and between Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The rules agreement was effective February 1, 1948 and is by reference made a part of this submission as though set out herein word for word. On August 21, 1954, the parties acting by and through their duly authorized representatives, entered into the following agreement:

"1. All claims or grievances arising on or after January 1, 1955 shall be handled 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 employee 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.

(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. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officers decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may

by agreement in any particular case extend the 9 months' period herein referred to.

2. With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule and if not thereafter handled pursuant to paragraphs (b) and (c) of Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred.

3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

4. This rule recognizes the right of representatives of the Organizations, parties hereto, to file and prosecute claims and grievances for and on behalf of the employees they represent.

5. This agreement is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the Carrier.

6. This rule shall not apply to requests for leniency."

2. On the 8th day of October, 1959, D. J. North, General Chairman, filed claim in writing with Mr. R. C. Becker, System Supervisor of Operations, the officer of the Carrier authorized to receive same, as set forth in ORT Exhibit No. 1. The Statement of Claim was as follows:

"1. Carrier violated the Agreement between the parties hereto when and because, effective August 12, 1959 it unilaterally discontinued a daily minimum call regular to the Depew, New York, Agent-Telegrapher position and transferred work which was performed by the Depew Agent-Telegrapher on a daily call basis prior to August 12, 1959 by assigning the performance of same to employees not covered by the Telegraphers' Agreement.

2. It is our further claim that the occupant of the Depew Agent-Telegrapher position, day-to-day basis, shall be allowed a minimum call (provisions of Rule 13 to apply) beginning August 12, 1959 and continuing each day thereafter until the violation complained of in this case are discontinued and such work returned to those of our class or craft at Depew."

3. On October 26, 1959, Mr. Becker declined the claim as set forth in ORT Exhibit No. 2. On December 23, 1959, General Chairman North notified Mr. Becker that his decision was rejected. (ORT Exhibit No. 3.)

4. In accordance with Carrier's designation of officer to receive appeal from decision of Mr. Becker, General Chairman North, on December 23, 1959, filed appeal in writing with Mr. J. E. Crowley, Superintendent, as set forth in ORT Exhibit No. 4. Mr. Crowley declined the claim on the 8th day of January, 1960, as shown in ORT Exhibit No. 5. On March 5, 1960, General Chairman North notified Mr. Crowley that his decision was rejected as set forth in ORT Exhibit No. 6.

5. In accordance with Carrier's designation of officer to receive appeal from decision of Superintendent Crowley, General Chairman North, on March 5, 1960, filed appeal in writing with Mr. C. L. Wagner, Chief of Personnel. ORT Exhibit No. 7 and Exhibit A to ORT Exhibit No. 12.

6. On May 6, 1960, Mr. Wagner rendered decision in writing disallowing the claim, as shown in ORT Exhibit No. 8.

7. On July 3, 1960, General Chairman North, in writing, requested Mr. Wagner to allow the claim. ORT Exhibit No. 9. The last paragraph of the letter reading:

"In accordance with provisions of Article V of the August 21, 1954 Agreement, you had only to and including May 4, 1960 to act on the appeal in this case by a written decision. Therefore, it is our claim that you have not met with provisions of Article V of the August 21, 1954 Agreement and that this claim must now be allowed on a default basis. Please advise."

8. On July 7, 1960, Mr. Wagner replied as follows: (ORT Exhibit No. 10.)

"Regarding your position outlined in the last two paragraphs of your letter July 3rd, I do not agree with your contention that my decision given you in this case was not timely and must now be allowed on a default basis.

As advised you in my letter May 6th, your letter of March 5th submitting the claim in this case to me on appeal was received in my office on March 7th and the time limit provisions for handling began to run from that date. Without waiver of my position in this respect, I have had no evidence presented to me to confirm your statement that your letter of March 5, 1960 bore postmark date of March 5, 1960."

9. On January 14, 1961, D. J. North, General Chairman, The Order of Railroad Telegraphers, gave affidavit as set forth in ORT Exhibit No. 12, with Exhibits A, B and C attached thereto. The affidavit was as follows:

"I, D. J. North, 74 Broad Street, Beaver Meadows, Pennsylvania, do hereby state on oath:

That on the 5th day of March 1960 I deposited in the United States mails in envelope addressed to

Mr. C. L. Wagner, Chief of Personnel
Lehigh Valley Railroad Company
143 Liberty Street
New York 6, New York

with proper postage affixed, the letter marked Exhibit A attached hereto.

That on the 9th day of May 1960 in due course of mail handling, I received from C. L. Wagner, letter attached hereto marked Exhibit B.

That the envelope in which the letter marked Exhibit B was enclosed was postmarked by United States mail service May 6, 1960 at 8:00 P. M. in New York City 7, New York. Photostatic copy of such envelope is attached hereto marked Exhibit C."

10. On January 14, 1961, General Chairman D. J. North furnished Mr. C. L. Wagner, Chief of Personnel, the affidavit (ORT Exhibit No. 12) with Exhibits A, B and C attached thereto as set forth in letter marked ORT Exhibit No. 11. Mr. Wagner did not in anywise respond to the letter.

ORT Exhibits Nos. 1 to 12, inclusive, attached hereto are made a part hereof as though set out herein word for word.

CARRIER'S STATEMENT OF FACTS: Prior to August 12, 1959 conductors on trains Nos. 107 and 108 turned in their remittances to the Agent at Depew, New York, in the morning when train No. 107 was waiting for Main Line train No. 7. When the Agent reported for the 2-hour call at Depew, New York, for the purpose of handling these remittances, he was also used when needed to assist the baggage room employe from Buffalo, New York, in handling the baggage car work in connection with trains Nos. 107 and 7. All the baggage car business at Depew, New York, from train No. 108 to Main Line train No. 8 was handled by baggage room employes from Buffalo, New York, and the Agent on the 2-hour call at Depew, New York, never was used in connection with this work.

On or about August 12, 1959 a night depository was installed at Suspension Bridge freight office so that the conductors on trains Nos. 107 and 108 could drop their remittances in the depository at that point. At the same time the baggage car work in connection with trains No. 107 and Main Line train No. 7 was such that it could easily be handled with the men on duty without the assistance of this Agent—hence, the Agent on the 2-hour call at Depew, New York was eliminated.

OPINION OF BOARD: Only the issue of proper procedure is before this Division.

The record shows that the claim was appealed to Carrier's highest officer by letter dated March 5, 1960. Carrier's officer did not disallow the

claim until he wrote to the General Chairman on May 6, 1960. This did not comply with the provisions of Article V of the August 21, 1954 Agreement which requires Carrier to deny or allow the claim within sixty (60) days after the notice of appeal was filed. Under the prevailing decisions of this Board, this sixty (60) day period commenced on March 6, 1960 and ended at midnight on May 5, 1960. Carrier's letter is postmarked 8:00 P. M. May 6, 1960.

National Disputes Committee Decision 16 held that where the claim is a continuing one, the receipt of Carrier's denial letter "stopped the carrier's liability arising out of its failure to comply with Article V of the August 21, 1954 Agreement." The denial letter was, for this purpose, received on May 7, 1960. Also see Awards 14502, 14369 and 11326.

Claimants are entitled to be compensated only from August 12, 1959 to May 7, 1960.

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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained to the extent noted in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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