

Award No. 15069

Docket No. CL-13927

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5317) that:

(1) The Carrier violated and continues to violate Rule 29 of the current Clerks' Agreement when it failed and refused and continues to fail and refuse to allow claims filed with Superintendent A. K. McKeithan on December 4, 1961 on behalf of Mrs. Leona LeBlanc and Mrs. Verna H. Johnson as follows:

(a) Mrs. Leona LeBlanc shall now be paid one day's pay at the messenger rate of \$16.50 per day for each day beginning October 19, 1961, and continuing each day of assignment until Mrs. LeBlanc is restored to position of messenger and provided with necessary transportation.

(b) Mrs. Vera H. Johnson shall now be paid one (1) hour per day at the messenger rate of \$16.50 per day beginning October 19, 1961, and continuing until Mrs. Johnson is required or permitted to report at the Freight Station to begin her tour of duty and where it will be terminated each day.

(c) Mrs. Vera H. Johnson shall now be paid for four (4) hours each day beginning October 19, 1961 and continuing until Mrs. Johnson discontinues the use of her automobile in the performance of her duties.

(2) Carrier shall allow the claims of Mrs. LeBlanc and Mrs. Johnson as presented.

EMPLOYEES' STATEMENT OF FACTS: The General Chairman having been advised by Mrs. Leona LeBlanc that she had been removed from her position of Messenger at the Freight Station at Beaumont, Texas, effective October 19, 1961, account she had advised the Agent it would be impossible to walk the distance required as Messenger (Employees' Exhibit No. 1), addressed a letter dated October 26, 1961 (Employees' Exhibit No. 2) to Mr. A. K.

12. The Superintendent's decision was not accepted, and the claim was appealed to the Assistant General Manager and then to this office on the basis that the continuing claims had not been timely declined by the Superintendent.

13. The claim was discussed in conference with General Chairman Ligon at which time it was agreed a joint check would be made of the duties of the messenger as originally proposed, without prejudice to the position of either party. The check was made on May 9, 1962, by Local Chairman Mack, Trainmaster Smith, and Agent C. E. Beckley, walking the route with Messenger V. H. Coward. The trainmaster and Local Chairman were not able to agree on the facts and each submitted separate reports. The Local Chairman reported that the messenger was required to walk 14.5 miles and the actual walking time was 4 hours and 49 minutes. The trainmaster reported the same distance traveled, but that the time consumed walking was 5 hours. Since making the check, the messenger position has been abolished effective June 15, 1962, and the duties are being performed by Group 1 Clerks in connection with their other duties.

OPINION OF BOARD: The instant case arises from claims filed by Mrs. L. LeBlanc and Mrs. V. Johnson for reimbursement of expenses incurred while using their personal automobiles in the performance of their duties as messengers.

These claims were filed on December 4, 1961, and replied to on December 27, 1961 by Superintendent McKeithan who suggested:

"... that an on-the-ground check be made with you and our trainmaster, walking the duties required by messenger for one eight-hour period, and develop exactly what is required and see whether the duties can be reasonably carried out.

Will you please advise if the Organization is agreeable to making this on-the-ground investigation and what date it could be made if Organization is agreeable?"

The Organization agreed to the check and there then followed an exchange of letters as to the proper place for commencing and ending such a tour.

On January 10, 1962 the Division Chairman telegraphed his disagreement with certain portions of the Carrier's tour proposal and refused to meet at the tour commencement suggested by the Carrier.

On February 16, 1962 the Carrier made another offer of joint inspection. On March 8, 1962 the Organization informed the Superintendent that his failure to decline the claim within sixty days of its filing had been a violation of Rule 29 (c) and that the claim therefore had to be allowed. The formal denial of the claim by Carrier was dated March 15, 1962.

The Organization asserts that neither side waived the provisions of Rule 29 and that the Carrier was under an obligation to abide by the sixty day limit. Having failed to notify the Organization of disallowance of the claim in timely fashion, the Organization argues that it must now be allowed.

The Carrier argues that the 60 day time limit was suspended during the parties discussions over the proposed tour. It contends that the Organization

is estopped from invoking Rule 29 because of its delaying the negotiations over the tour issue until the 60 day period had passed, and inducing the Carrier to believe that the time limit had been waived, and that the period of negotiation would not be used in calculating the sixty day period.

We find that although the parties did endeavor to work out arrangements for a joint tour of the position within the sixty day period following the filing of the claim, there was no mutual agreement to waive the sixty day rule. The evidence is that the Organization, on January 10, 1962, refused to take part in the joint tour proposed by the Carrier. There is no evidence that the Carrier endeavored to reopen these discussions during the next three weeks before the February 2nd deadline, or that the parties still viewed themselves as in negotiation as to either a joint tour or on the merits of the claim.

Accordingly, we find that the claim was not disallowed within the time required, and that, it must be allowed, in accordance with the prior rulings of this Board, until March 15, 1962, the date on which the claim was actually denied. This holding is in harmony with Decision 16 of the Disputes Committee (Award 13780) and prior rulings of this Board in Awards 10644, and 11211:

" . . . A party's failure to make a timely denial of a continuing claim, or to make a timely appeal from a denial of such a claim, does not mean that the substantive nature of the continuing claim therefore must be granted or denied for the unlimited future. . . . The purpose of the Time Limit Rule is to provide for the expeditious handling of claims, not to fasten upon the parties a system wherein a single lapse can produce continuing or repeated injustices thereafter."

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 the Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1966.

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