



Award No. 15070  
Docket No. CL-13986

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Arnold Zack, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5308) that:

1. Carrier violated the Clerks' Agreement when Superintendent A. C. Novak failed to decline claim filed under date of November 17, 1961 by Local Chairman C. T. Council in behalf of employes M. R. Newman, W. C. Hocking and N. J. Jennings, their successor or successors, if there be any, at Dubuque, Iowa, within sixty (60) days from the date filed.

2. Carrier shall be required to allow the claim as originally presented.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of November 17, 1961 Local Chairman C. T. Council submitted the following claim to Superintendent A. C. Novak:

"1. Carrier violated and continues to violate the Clerks' Rules Agreement at Dubuque, Iowa when it abolished OS&D Clerk Position No. 138, which was a regular 5-day position, and simultaneously created Relief Assignment No 9, thereby combining three days of regular Position No. 138 and two days of relief work.

2. Carrier shall now be required to compensate Employee M. R. Newman, his successor or successors, if there be any, at the pro rata rate of OS&D Clerk Position No. 138 for eight (8) hours for each Monday and Friday he is required to perform other than OS&D work retroactive 60 days from the date of this claim until the violation is corrected.

3. The Carrier shall now be required to compensate Employee W. C. Hocking, his successor or successors, if there be any, at the overtime rate of Chief Bill Clerk Position No. 124 for four (4) hours for each Saturday that he is not permitted to perform billing work

Chairman, under date of June 26, 1962 and as Carrier's Exhibit E copy of letter written by Mr. Amour to Mr. Gilligan under date of September 25, 1962.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On November 17, 1961, Local Chairman C. T. Council submitted a written claim to Superintendent Novak. On December 19, 1961, Council sent a letter to Novak referring to the earlier claim, noting:

"As I have received no reply to the above claim, may I now be favored with your reply."

On January 29, 1962, Council again wrote Novak of the claim and tracer and added:

"When we filed the claim, we gave you our specific reasons as to why we felt that the claim was proper and therefore, should be allowed and paid, and that this violation be corrected.

We believed it to be proper and conducive to good employees relationship for you to advise why you disagree with the claim, and your reasons for disagreement or declination of claim.

Inasmuch as I have not heard from you with respect to my claim, or tracer asking you for reply, I assume that the facts as stated in our original claim are correct, and that your silence indicates willingness that the matter be referred to other officers of the Brotherhood for further handling, therefore I am arranging accordingly."

Several other letters were sent by the Organization to Carrier officials. No replies were received until, on June 26, 1962 a Carrier official replied in part:

"First of all, I wish to say that I regret my reply has been so long delayed.

I have just been furnished a copy of a letter written by Mr. Novak to Mr. C. T. Council, Local Chairman, B. of Ry, Dubuque, Iowa, under date of December 22, 1961 reading:

\* \* \* \* \*

'In reviewing your contentions that there were schedule violations in the abolishment of Positions No. 138 and the establishment of another assignment, cannot agree that there was any schedule violation and payment on claims is herewith declined.'

In view of Mr. Novak's aforequoted letter to Mr. Council under date of December 22, 1961 it would appear as if this claim was, contrary to your contention, properly and timely declined by Mr. Novak to Mr. Council."

The issue for decision is a factual one. Did the Carrier respond to the claim within the sixty day limit provided for in Article V of the August 21, 1954 Agreement?

The Organization contends that it did not, citing the numerous unanswered letters and tracers sent to the Carrier, and noting that none elicited a reply until June 26, 1962.

The Carrier alleges that a denial was timely, concise, and from its interpretation of the Organization's January 29, 1962 letter, must have been received by it. It asserts that having timely replied to Organization's claim and having that reply acknowledged on January 29, 1962 it was under no obligation to reply to the several later letters.

The language of the Organization's January 29, 1962 letter supports the view that the Carrier's denial had not in fact been received within the sixty day period. This view is supported by the clear language:

"Inasmuch as I have not heard from you with respect to my claim, or tracer asking you for reply, I assume that . . . your silence indicates willingness that the matter be referred to other officers of the Brotherhood for further handling . . ."

This interpretation is supported by the fact that none of the letters sent during the following months were acknowledged by the Carrier with reference to any earlier letters until half a year after the original claim.

The Carrier's claim that reference to specificity in the January 29 letter indicates receipt of the denial of the claim is not convincing, since the letter in its entirety could well stand as support for its original claim, and Organization's failure to understand the absence of a reply thereto. For this reason as well, we are unable to turn the case on the Local Chairman's statement that he would have asked for specificity if given a simple declination of a claim.

Contrary to the cases cited by the Carrier concerning receipt of a mailed letter, we here lack convincing evidence of the denial having been mailed.

We have only Carrier's reference to being

" . . . furnished a copy of a letter written by Mr. Novak . . . under date of December 22, 1961 . . ."

In view of the foregoing we must come to the conclusion that there is inadequate evidence to support the Carrier's argument of timely denial.

Accordingly, we find that the sixty day rule was violated.

Under the holdings of this Board we conclude that the Organization's claim must be upheld only until the date on which the Organization received the Carrier's letter of June 26, 1962. (National Disputes Committee Decision No. 16, 14369, 14603.)

**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