

**NATIONAL RAILROAD ADJUSTMENT BOARD****THIRD DIVISION**

Arnold Zack, Referee

**PARTIES TO DISPUTE:****BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES****THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
(Chesapeake District)****STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5343):

(a) That the Carrier violated the Agreement when it failed to timely allow or disallow, in writing a claim filed on April 4, 1962, by Weighmaster-Yard Clerk E. T. Little.

(b) That E. T. Little now be allowed \$42.66 covering cost of a new pair of glasses which he had to purchase in order to be able to perform the duties of his position.

**EMPLOYEES' STATEMENT OF FACTS:**

1. On April 4, 1962, Claimant E. T. Little wrote to Superintendent O. W. Draper as follows:

"Note attached bill from Drs. Conkle & Milleson, Optometrists, 322 Center St., Ironton, Ohio.

March 27, 1962 I came to work at the Scale Office, Fitzpatrick Yard, at 8 A. M. and about 9:30 A. M., I received a boot through the tube system from the westend of the Fitzpatrick Yard. The door on the receiving end of this system was out of order and when the boot arrived, I just touched the door and it flew open with such force that it caused me to jump back and my glasses flew off my head. They fell to the floor breaking the frames and chipping the lens to such an extent that I couldn't use them. I called Mr. McMeans and told him I had broken my glasses and that I would have to go and have them fixed. He let me check out and I went to have them repaired. The above Optometrists said they couldn't be repaired so I had them make me a new pair.

The door was reported out of order and then men from the Round House came down and made the repair on this door about 9 A. M. on the morning of the 28th.

I feel my glasses were broken due to faulty equipment and my glasses should be replaced by the company."

\$42.66 covering cost of the new pair of glasses. This letter reveals, that Yard Clerk Little conferred with the District Claim Agent about the claim on May 7, June 11, July 2 and July 3, 1962, (the 59th day after filing his alleged claim), without receiving payment for the glasses. The Division Chairman stated in the letter:

"The declination of this claim was not received in writing nor was it declined within the time limits governed by Rule 27½."

Said letter has been reproduced and attached as Carrier's Exhibit 3.

Rule 27½ of General Agreement No. 8, reads in part as follows:

"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 precept or waiver of the contentions of the Carrier as to other similar claims or grievances."

On August 31, 1962, Superintendent Draper wrote to Division Chairman Schmidt advising him that such claims are not covered by the agreement and not a proper matter to handle as a grievance and accordingly declined the claim. Carrier's Exhibit 4.

By letter dated September 13, 1962, Mr. C. E. Weaver, Jr., Assistant Vice President-Labor Relations was advised by the General Chairman that the Carrier's declination was unacceptable and the claim was, therefore, being appealed. Carrier's Exhibit 5.

Subsequent correspondence between C. E. Weaver, Jr., Assistant Vice President-Labor Relations and C. B. Moore, General Chairman, progressing the alleged claim to this Board has been reproduced, attached and identified as Carrier's Exhibits 6, 7 and 8.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On March 27, 1962 Claimant E. T. Little accidentally broke his eye glasses while at work at the Scale Office, Fitzpatrick Yard.

On April 4, 1962 he submitted a claim for \$42.66 to cover the cost of repairing the broken glasses.

On April 10, 1962 he was informed that his letter and invoice had been forwarded to the Carrier's District Claim Agent. Following several telephone calls, the Claimant was informed verbally on July 3, 1962 that his claim would not be paid. Inasmuch as no formal declination of the claim was made, the Organization asserts that Rule 27½ of the parties' Agreement was violated, and that, accordingly, the claim must be granted.

The Carrier acknowledges that no formal disallowance of the claim was made, but asserts that since this was a proper subject for a routine accident claim and did not come within the purview of Rule 27½, the Carrier was not required to file a written denial of the claim as the Organization alleges.

Rule 27½ states in part as follows:

"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 . . . 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 in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented . . ."

The essential question for determination is whether or not Little's claim for reimbursement for broken eye glasses should be construed as a claim under the foregoing provision.

In Award 10119 (Carey), this Board held that a claim or grievance as contemplated by the language of the parties' Agreement:

". . . is one based on any underlying duty or obligation of the Carrier to the employees expressly or impliedly imposed on it by the Collective Bargaining Agreement or by law.

However reasonable or meritorious the employee's request may otherwise be, if it is not based on such an obligation, it is not the kind of claim or grievance which must be denied with stated reasons within 60 days at the risk of being automatically allowable."

In view of the fact that the protest in the instant case is not a claim of alleged violation of the parties collective bargaining agreement it is necessary to conclude that we lack jurisdiction to consider the Claimant's case.

**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 is without jurisdiction over the dispute involved herein.

#### AWARD

Claim dismissed for want of jurisdiction.

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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