

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Claude S. Woody, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

The claim appealed to the General Manager, i.e., District Gang Foreman H. H. Buchanan be paid for time lost between March 5, 1963 and April 27, 1963, now be allowed as it was presented because the General Manager failed to give reasons, in writing, for his disallowance of said claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant entered the Carrier's service on February 19, 1919, and on January 30, 1963, he was employed as district gang foreman No. 130 at Memphis, Tennessee. On that date, a derailment occurred on the claimant's assigned territory. Members of the claimant's gang were called during overtime hours to repair track damaged by the derailment and a junior foreman was called to supervise their work. For this work, the employees each received 5 and one-half hours' pay at their respective time and one-half rates.

The claimant was available and was not called. Thus, when the claimant submitted the payroll and overtime report for the members of his gang who worked, he also claimed an equal amount of time.

On February 18, 1963, Division Engineer Catlett addressed a letter to the claimant, the pertinent portion of which reads:

"Arrange to report to Roadmaster's office at Tennessee Yard, 8:30 A. M., Tuesday, February 26, 1963, for hearing in connection with your allegedly submitting payroll and overtime report indicating work performed on January 30 and 31, 1963, when no work actually done. You may have a representative as specified by agreement rules if one is desired."

Hearing was held on February 26, 1963, following which the claimant received a letter, reading:

claim and that the Carrier subsequently failed and refused to allow the claim as presented, in accordance with the mandatory provisions of Section 1 of Article V of the August 21, 1954 Agreement.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The claimant in this dispute, District Gang Foreman, H. H. Buchanan, was formerly employed by the Carrier in its terminal at Memphis, Tennessee.

On February 18, 1963, claimant was notified to report for hearing in connection with his allegedly submitting payroll and overtime report indicating work performed on January 30 and January 31, 1963, when no work was actually done. Hearing was held February 26, 1963, as scheduled. On March 5, 1963, claimant was notified that as a result of hearing conducted with him by Division Engineer on February 26, 1963, in connection with his allegedly submitting payroll and overtime report indicating work performed on January 30 and January 31, 1963, when no work was actually done, he was, effective that date, dismissed from the service. The claimant was reinstated in the service of the Carrier effective April 27, 1963.¹

Claim was presented and progressed on appeal for time lost by claimant for the period March 5, 1963 through April 27, 1963. In the period beginning March 6, 1963 and ending April 27, 1963 the claimant lost a total of 38 work days. The monetary amount of the claim is \$793.01.

The measure and propriety of discipline assessed by the Carrier is not an issue in this dispute. The dispute involves only a question of the interpretation or application of an agreement rule. The dispute which the Organization has submitted to this division of the Board² is based solely on whether or not the Carrier's action in this case met the requirements of the time limit on claims rule.

OPINION OF BOARD: This claim is presented solely on the procedural issue, i.e., did the Carrier fail to comply with Article V, Section 1 (a) which provides:

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

Page 20 of the record is the Carrier's response to the claim, which reads as follows:

¹On October 18, 1963, the Carrier received notice from the Railroad Retirement Board that annuity in favor of claimant had been approved under Section 2(a)4 of the Railroad Retirement Act effective May 25, 1963.

²Or National Disputes Committee whichever the case may be.

"ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

Springfield, Missouri
October 7, 1963

Mr. Henry F. Meeth
General Chairman-BMofWE
P. O. Box 1396, S. S. Station
Springfield, Missouri

Dear Mr. Meeth:

Reference my letter September 12 agreeing to conference which was later postponed at your convenience and held on October 4, concerning discipline assessed against District Gang Foreman H. H. Buchanan, and your request that he be paid for time lost between March 5 and April 30, 1963:

After our conference and another review of the facts and circumstances in this case, your request for removal of discipline and for payment for time lost is declined.

Yours very truly,

/s/ H. L. Gastler"

It is our opinion that the above and foregoing document fails to impart the required notice.

Carrier argues that the Organization tolled the time allotted under the rule, by virtue of a letter appearing at page 21 of the record. This letter, dated April 21, 1964, is a further request by the Organization that the Carrier advise the reasons for declination. Except by definite written agreement evidencing the interruption of time allotted under the rule or express waiver of the rule, we are of the opinion that the rule must be strictly applied. The letter next above referred to was written after the notification period had expired and does not evidence intent to waive the rule.

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 Claim should be allowed as presented.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1967.

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