



Award No. 15395
Docket No. CL-15535

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5724) that:

(a) Carrier violated the Agreement when it dismissed Mr. J. M. Eudy, Chief Clerk, Sevier Transfer, Tennessee, from the service of the Southern Railway Company effective May 17, 1963, charged with failure to notify the consignee that a carload of lettuce was at Sevier Transfer being transferred into another car.

(b) Mr. J. M. Eudy shall be compensated in full for the eleven (11) days, May 17, 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31, 1963, that he was unjustly held out of service.

EMPLOYEES' STATEMENT OF FACTS: J. M. Eudy had a Group 1 seniority date of January 23, 1928. He was regularly assigned as Chief Clerk at Sevier Transfer, Knoxville, Tennessee. His total service dates back to September 15, 1927.

Mr. Eudy was dismissed from the service of the Southern Railway Company by letter dated May 17, 1963, and signed by Mr. T. O'Brien, Superintendent (Employees' Exhibit B). He had been notified by letter dated May 16, 1963, from Agent D. E. Clark, Sevier Transfer, Tennessee, that he was being relieved from service (Employees' Exhibit A).

An investigation was requested by Mr. Eudy and was held on the date of May 28, 1963, and he was returned to service as of June 11, 1963 (Employees' Exhibit C).

Claim was filed under date of July 10, 1963 (Employees' Exhibit G), and appealed up to Carrier's highest officer designated for that purpose. Conference was held on August 18, 1964, and again on December 16, 1964, Carrier declining the claim. Copies of all correspondence between the parties in connection with the claim are attached and identified as Employees' Exhibits A through Q. Employees' Exhibit R is a copy of the transcript of the investigation held by Superintendent of Terminals, Mr. J. W. Huckaby, Tuesday, May 28, 1963. Employees' Exhibit S is a copy of some instructions issued by Agent D. E. Clark,

"(a) All claims or grievances must be presented in writing by or on behalf of the employe 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 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, 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 employes 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." (Emphasis ours.)

The 60-day period for an appeal from the Superintendent's decision was **not** extended by the Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case the Carrier alleges that the claim is barred because the Organization failed to appeal the declination by the Superintendent within sixty days, as provided in Article V, Section 1 (b) of the August 21, 1954 Agreement.

Briefly the correspondence on the property is as follows:

- May 16, 1963 — Agent Clark's letter to Claimant Eudy, advising that Eudy was relieved as Chief Clerk.
- May 17, 1963 — Superintendent O'Brien's letter to Eudy advising that Claimant had been dismissed from service.
- May 21, 1963 — Claimant Eudy's letter to Superintendent O'Brien requesting an investigation, and a five day extension.
- May 23, 1963 — Superintendent O'Brien's letter to Claimant Eudy granting the five day extension.
- May 27, 1963 — Superintendent Huckaby's letter to Claimant Eudy setting investigation.
- May 31, 1963 — Superintendent O'Brien's letter to Claimant Eudy, restoring Eudy on a leniency basis.

July 10, 1963 — Chairman Saylor's letter to Superintendent Addington, claiming lost time for Eudy while Claimant was out of service.

July 17, 1963 — Superintendent Addington's letter to Chairman Saylor declining the appeal.

The Organization then insists that on August 24, 1963, Chairman Broom sent a letter to General Manager Shu, appealing the decision of Superintendent Addington.

The Carrier denies receipt of this letter.

General Chairman Broom then wrote to General Manager Shu on November 1, 1963 demanding allowance of the claim as presented, for failure of the Carrier to reply to the letter allegedly sent on August 24, 1963.

General Manager Shu replied on November 20, 1963, that after the claim was declined on July 17, 1963, the Carrier received nothing further until the letter of November 1, 1963. The Carrier then asserts that the claim is barred.

Our attention is directed to Awards 10173, 11505, 11568 and 14354 which seem to support the contention advanced in this case by the Carrier.

We are persuaded that the prevailing view adopted by this Board places the burden of proof on the party who allegedly mailed the letter to so prove, if the other party denies receipt thereof.

We are not persuaded that this rule is one which encourages good labor relations, and we would suggest that the parties seek a method, such as the use of return receipts, to eliminate the possibility of a proper claim not being heard by this Board in a similar situation.

Nevertheless, Carrier's argument appears to be in accord with the precedent established by this Board and we hold that the claim is barred by the provisions of Article V, Section 1 (b) of the August 21, 1954 Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1967.

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