



Award No. 15408

Docket No. CL-16377

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5989) that:

1. Carrier violated Rule 41 of the Clerks' Agreement dated July 16, 1962, as well as national agreement dated August 21, 1954, when the Assistant Vice President-Traffic failed to decline within 60 days from the date filed, claim on behalf of Basil Slenska, Jr., and

2. Carrier shall now allow claim as presented, i.e.,

(a) Restore Basil Slenska to service with seniority and all rights unimpaired and his service record with the Carrier cleared.

(b) Fully compensate employe Slenska from January 12, 1965 for each and every day he was held out of service until such time as he is restored to service.

EMPLOYEES' STATEMENT OF FACTS: On January 8, 1965, Basil Slenska, Jr. became ill at home and did not report for work, but, instead, visited his personal physician, who advised him to stay at home and not return to work until January 18, 1965. Mr. Slenska is employed as a Multi-lith Operator in the Traffic Department at 140 Cedar Street, New York City, New York.

Mr. Slenska contacted Chief Clerk Breland to explain the reason for his absence, stating he would try to return to work on January 12, 1965, although he had still not completely recovered from his illness. Mr. Breland informed Mr. Slenska that his position was being advertised and a Form 3004 which Mr. Slenska had previously signed, was being dated and forwarded through the usual channels, and he was no longer an employe of the Erie Lackawanna Railroad Company.

Claim dated February 22, 1965 was filed by the Local Chairman with Mr. L. M. Schukei, Assistant to Vice President-Traffic. (Employes' Exhibit A)

next time he returned to his bad habits his resignation would be put into effect, his request that the investigation not be held was granted. On January 8, 1965, the day after a pay day, Slenska failed to report for work, and did not call in until January 11, 1965, at which time he informed Chief Clerk Breland that he was moving, that there was no phone handy and, as his wife could not speak English, she could not call either. He also talked to Chief Clerk J. J. Hotaling that same afternoon and stated, "I do not have to call in — why should I have to call in."

The signed resignation was then placed into effect January 8, 1965, consistent with claimant's request.

Claimant requested a meeting with Mr. Schukei to discuss the matter; however, because of various circumstances, such as prior appointments, illness, etc., a mutually satisfactory time and date could not be agreed upon.

Under date of February 22, 1965, Local Chairman Kearns submitted claim on behalf of claimant (Exhibit A). Mr. Schukei denied said claim under date of February 24, 1965 (Exhibit B), and on March 29, 1965, Local Chairman Kearns wrote Mr. Schukei (Exhibit C), requesting an investigation and taking no exception to the manner in which the claim was denied. Within two weeks and before Mr. Schukei could reply account attending a traffic officers' conference, Local Chairman Kearns, in letter dated April 12, 1965 (Exhibit D), advised Mr. Schukei that the claim was being progressed to Division Chairman Merritt for further progression. Again, no protest to the manner in which denial was made. However, Division Chairman Merritt did not progress the claim on the property in accordance with established procedure under the time limit on claims rule and the Railway Labor Act to Vice President H. C. Schmidt, the next appeal officer to whom the claim should have been progressed; instead, he turned the case over to General Chairman Beck, who appealed to Carrier's highest officer designated to handle such matters under date of May 13, 1965, who referred the General Chairman to the claimant's irresponsible record, and also stated as follows:

"It is my considered opinion that Carrier was far too lenient with this individual and that his services with the Carrier have been properly terminated by his resignation.

It is noted that you have designated this matter as your file Claim No. 1614 and this is to advise that as this matter has not been handled consistent with the provisions of Rule 41, I do not consider this case as a claim properly before me under the time limit rule. Without prejudice thereto, any claim is denied."

It will be noted that the claim was not only appealed contrary to established procedure but was untimely as well — seventy-eight (78) days beyond the denial. Under date of April 6, 1966, Carrier was advised by C. L. Dennis that the claim was being progressed to this Division for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here involved is dated February 22, 1965.

Carrier's Assistant Vice President-Traffic on February 24, 1965, wrote the Local Chairman, stating:

"This will acknowledge receipt of your letter of February 22, 1965, pertaining to Mr. Basil Slenska, Jr.

Mr. Slenska resigned."

This letter does not meet the requirements of Rule 41 (a) of the August 21, 1954 Agreement, which requires that a Carrier shall, within 60 days from the date a claim is filed notify whoever filed the claim or grievance . . . in writing of the reasons for such disallowance.

The words "Mr. Slenska resigned" does not constitute a denial of the claim nor does it meet the requirements of the Rule that Carrier give "the reasons" for the claim's disallowance.

Carrier's Vice President-Labor Relations did properly deny the claim on July 22, 1965 — well beyond the specified time — making a specific denial of the claim. At that time Carrier also advised the Organization that its claim had not been handled in the "usual manner."

However, Carrier erred initially, and we must and do find it violated Rule 41.

Carrier's proper denial was dated July 22, 1965. Accordingly, its liability for violating Rule 41 ceases on that date.

In so holding we sustain Part 1 of the claim.

Part 2 (b) of the claim is sustained to and including July 21, 1965.

Part 2 (a) is denied.

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 disposed of in accordance with Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1967.

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