# Award No. 15631
# Docket No. MW-14854

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

John J. McGovern, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## BOARD OF TRUSTEES OF THE GALVESTON WHARVES

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

(1) The claim presented by General Chairman E. Jones in his letter* of February 19, 1963 to the Carrier's Superintendent, Construction and Maintenance, should have been allowed as presented because said Carrier officer failed to give a reason for his disallowance of said claim, and, as a consequence thereof

(2) The Carrier now be required to allow the claim as was presented in the aforementioned letter* of February 19, 1963.

*This letter will be quoted as "Letter No. 1" in the Employes' Statement of Facts.

EMPLOYES' STATEMENT OF FACTS: The following quoted correspondence fully and accurately sets forth the factual situation involved in this case:

LETTER NO. 1

"700-124
February 19, 1963

Mr. R. M. Lindsay, Superintendent
Construction and Maintenance
Galveston Wharves
Galveston, Texas

Dear Sir:

It is the claim of the System Committee of the Brotherhood of Maintenance of Way Employes' organization that:

1. The Galveston Wharves violated the effective agreement, Article 14, when on or about December 31, 1962 a certain number of bulletins were issued addressed to the Employes in Construction and Maintenance Department; To Employes in Hoist Department; To Employes of Water Service Department; To Employes of Truck and Tractor Drivers Department, Sub-Department of Construction and Maintenance

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 state 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.

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

5. On December 23, 1962, employes of the Carrier represented by the International Longshoremen's Association went on strike, and established picket lines on the property of the Carrier which prevented the Carrier from engaging in its normal activities and which prevented certain of the Carrier's employes from reaching the location of their assigned work. Carrier's striking employes were joined in the picketing by non-carrier employes of the various steamship companies and stevedores, such employes also represented by the International Longshoremen's Association. This strike ended on January 25, 1963.

**OPINION OF BOARD:** The main thrust of the arguments propounded by both sides in this dispute deals specifically with certain procedural requirements rather than with the substantive merits of the Claim itself.

The Organization contends that the Carrier violated the agreement, the applicable portion of which prescribes that the Carrier is obligated in each and every case in which a claim is to be disallowed, to notify within sixty days from the date the claim is filed whomever filed the claim in writing of the reasons for such disallowance. If not so notified, the claim shall be allowed as presented.

On the other hand, the Carrier maintains that the Claim as presented is invalid in that it is a blanket claim submitted on behalf of unnamed employes, and as such is expressly contrary to the provisions of Article V, Section 1(a) of the agreement of August 21, 1954. The aforecited Article V is identical to Article 9 and 12 of the two agreements with the employes.

An examination of the record reveals these pertinent facts:

1. The Carrier's officer did not give the Organization a reason for declination of the Claim as required by the agreement.

2. The Organization did not specify the employes on behalf of whom this claim was submitted as required by the agreement.

3. The General Chairman, some six months after the submission of the original claim, attempted to remedy the above situation by listing the employes affected by the claim, but, once again, failed to identify the precise claims of certain, specific employes, and in so doing asserted that the Carrier's officials are best able to make this determination.

We invite the attention of the Board to Award 11372 (Dorsey), wherein the precise issues with which we are confronted were discussed:

> "We interpret the phrase 'on behalf of the employes involved' must be described in the claim with such particularity as to make his or their identity known to the Carrier under the circumstances prevailing. Carrier in its exhaustive brief, captioned 'Claims for Unnamed Employes' Are Invalid' appears to recognize that this interpretation is sound.
>
> 'Employes involved' we hold to mean employes adversely affected by an alleged violation of a collective bargaining agreement. It is such employes who must be described so as to satisfy the 'particularity' test set forth in the preceding paragraph. A mere assertion by a Petitioner that a Carrier can ascertain the names of the employes involved from its records has no probative value."

We adopt the language of the above quoted award and apply it to the instant claim. We further state that since no valid claim existed ab initio, the fact that the Carrier failed to give a reason for declining the Claim is of no consequence. Since the claim was invalid in the beginning, we have no right to consider Carrier's later procedural error, nor do we have a right to consider the merits of the case. We will dismiss the claim.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has no jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.

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