

Award No. 15919
Docket No. SG-15311

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 41, when Walter Heupel was allowed to work as a signalman in Gang 13 at Decoursey, Kentucky, when there was no vacancy in the gang.

(b) Carrier also violated Rule 54 when Superintendent M. R. Black failed to deny the appeal of a claim on behalf of Chester Phillips because of the violation of Rule 41.

(c) Carrier be required to pay the claim in accordance with the provisions of Rule 54 (b), as it was originally presented, as follows:

Had Mr. Heupel not been allowed to work in violation of our agreement, the work he has been required to do from March 4 to March 20 inclusive, would have been assigned and performed by the senior signalman on gang 15, and would have had to be performed at time and one-half. Therefore, this is a claim of the Brotherhood for 8 hours at time and one-half each work day Monday through Friday from March 4 to March 20 inclusive, to be paid to the senior signalman in gang 15 who is Chester Phillips. [Carrier's File: G-313-2; G-313; G-265]

EMPLOYEES' STATEMENT OF FACTS: Originally, this claim involved the question of a violation of the current Signalmen's Agreement, particularly Rule 41, when a new employe was hired and assigned to the position of Signal Maintainer at Decoursey, Kentucky. In the handling, after the denial by Supervisor, Communications and Signals Frank Hacker, Local Chairman Clifton Webster addressed an appeal to the Division Superintendent, Mr. M. R. Black, who never replied. Therefore, the merits of the claim are no longer an issue.

The only issue to be decided is whether or not Carrier is required under the provisions of Article V of the August 21, 1954 National Agreement to allow

Mr. Black's letter of June 17, 1963 to Local Chairman Webster clearly denied one claim, which was in favor of Clifton Webster as stated in his letter, and therefore cannot by any stretch of imagination be considered a denial of any other claim or grievance presented to him on appeal on this date or any other date.

Rule 54 of the Agreement, and Carrier Proposal number 7 of the May, 1955 Agreement, both state clearly that if the Carrier Official does not deny the claim or grievance within the limitation period, they will be allowed as presented. There are no exceptions to the rule, and the claim and grievance Mr. Black did not deny within the 60 day period are now payable and allowable as presented in our appeal.

Before the claim and grievance was filed, I attempted to adjust the violations of our agreement, with both the Supervisor of Communications and Signals Office and with Superintendent, Communications and Signals Office, but no adjustment of the differences could be even discussed seriously with the Officers concerned, therefore, we had no other choice if we are to maintain our rights under the Agreement properly.

Will you please instruct that the claim be paid and the grievance be allowed, both as presented in our appeals to Mr. Black.

I do not know if a time limit is involved in this instance, however, if you consider there is, I am agreeable to extend the time limit, until the claims can be discussed with you in conference.

Very truly yours,

/s/ T. J. Bass
General Chairman

cc: File
Comm. Sec.
L. Chrm. Webster"

Conference was held in the Personnel Department December 13, 1963, at which time agreement was reached as to seniority date for Mr. Heupel and to pay Clifton Webster two hours' overtime.

The Director of Personnel's letter of January 3, 1964 to the General Chairman, regarding claim for Chester Phillips, is herewith filed as Carrier's Exhibit I.

The agreement involved became effective February 16, 1949, and has been revised to October 1, 1950. Copies of the agreement are on file with the Third Division.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that this claim should be sustained as presented because of the failure of the Carrier's Division Superintendent to deny the claim in writing within 60 days after its appeal to him on May 31, 1963. The Organization's position is taken under an Agreement dated May 20, 1955 which adopts as an Agreement between the present

parties certain articles of the National Agreement of August 21, 1954, including Article V here at issue, which provides in part that:

"1. (a) . . . 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 . . ."

The Carrier responds that its Superintendent did deny the claim in writing on June 17, 1963, and submits a copy of his letter in evidence. We have examined that letter and find that it dealt with a different claim and Claimant and made no reference to the claim and Claimant involved in this Docket.

The Carrier further defends, asserting that the Organization representative did not thereafter progress the claim within the prescribed time limits. The record shows, however, that under date of August 5, 1963 the Organization advised the Superintendent of his default. In Award No. 13530 this Board quoted the following from NDC Decision 15:

" . . . the National Disputes Committee points out that where either party has clearly failed to comply with the requirements of Article V the claim should be disposed of under Article V at the stage of handling in which such failure becomes apparent. If the Carrier has defaulted, the claim should be allowed at that level as presented; . . ."

This claim must be sustained as presented.

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 jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.

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