

Award No. 16542
Docket No. CL-16692

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6131) that:

(a) The Southern Pacific Company violated the current Agreement between the parties when on November 2, 1964, it arbitrarily displaced Mrs. Andromeda Mackevich from her regularly assigned position, and then suspended her from service; and,

(b) The Southern Pacific Company violated the current Agreement between the parties when it failed and refused to grant Mrs. Mackevich an investigation duly requested under the provisions of Rule 50 thereof; and,

(c) The Southern Pacific Company violated the current Agreement between the parties when it failed, within the time limit prescribed in Article V, Section I (a), of the August 21, 1954 Agreement, to deny claim submitted for monetary loss by Mrs. Mackevich; and,

(d) The Southern Pacific Company shall now be required to allow Mrs. Mackevich eight (8) hours' additional compensation at the rate of her assigned position, Freight Bill Clerk No. 21, November 2, 1964 and each date thereafter to October 28, 1965, the date she was returned to service on Position No. 21, Freight Bill Clerk.

OPINION OF BOARD: Claimant was withheld from Carrier's service from November 2, 1964 to October 28, 1965. The Carrier has contended that its action was on the advice of the Division Surgeon and the Chief Surgeon of the Southern Pacific Employees Hospital Association. Claimant was permitted to return to service on advice of the Chief Surgeon on October 26, 1965.

The Petitioner asserts that Claimant was not taken out of service on the recommendation of the Chief Surgeon, as contended by the Carrier, but was taken out of service arbitrarily; that the Carrier violated the Agreement when

it refused to grant Claimant an investigation under Rule 50; and that Carrier failed to deny the claim for monetary loss submitted by Claimant within the time limits prescribed by Article V of the Agreement of August 21, 1954.

The Carrier denies each of the contentions of the Petitioner and, in addition, takes the position that the entire claim is barred because of the failure of the Petitioner to comply with Article V of the Agreement of August 21, 1954.

The record shows that on November 11, 1964, Claimant wrote the Carrier's Freight Agent protesting being disciplined and held out of service, making claim for compensation for all time lost from 9:12 A. M., Monday, November 2, 1964, requesting that she be restored to her position, and asking for an investigation under Rule 50. A copy of Claimant's letter was sent to the Division Chairman of the Organization. On the same date, the Division Chairman filed a claim with the Carrier's Division Superintendent claiming compensation for Claimant from November 2, 1964, and vacation and other benefits to which she may be entitled.

The Superintendent wrote Claimant on November 18, 1964, in response to her letter of November 11, 1964, addressed to the Freight Agent, explaining to her that she was being withheld from service on the recommendation of the Chief Surgeon, that she had the privilege of seeking further medical attention at the Memorial Hospital, and that the investigation rules of the Agreement were not involved.

On November 25, 1964, the Superintendent wrote the Division Chairman denying the entire claim that had been submitted. On September 16, 1965, a new Division Chairman wrote the Superintendent seeking allowance of the claim on the premise that the monetary portion thereof had not been disallowed to the Claimant. On September 23, 1965, the Division Chairman sought to refile the claim, claiming compensation for Claimant commencing July 28, 1965.

The Carrier states that historically the Superintendent has been the officer of the Carrier authorized to receive claims or grievances and that the Freight Agent is not so authorized.

Section 1(a) of Article V of the Agreement of August 21, 1954, reads in part:

"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."

We agree with the Carrier that the above rule does not contemplate both an employe and his representative presenting the same claim at the same time, and that it was proper for the Carrier to recognize the authority of the Division Chairman to present the claim in behalf of Claimant. Furthermore, the claim that the Claimant attempted to initiate with the Freight Agent was not presented to the officer of the Carrier authorized to receive

the same. We find and hold that there was no obligation on the part of the Carrier to deny the monetary claim to the Claimant under the circumstances here involved, and that the denial of the claim by the Superintendent to the Division Chairman on November 25, 1964, constituted a denial under the provisions of Article V of the Agreement of August 21, 1954.

The record is clear that the Organization did not notify the Superintendent within sixty days that his decision of November 25, 1964, was not accepted, nor did the Organization appeal from his decision within sixty days, as required by Section 1(b) of Article V. This Board has consistently recognized that the provisions of Article V are mandatory and a claim not processed in conformity therewith must be dismissed. Award 12193. The Board has also consistently held that once a claim has become barred by failure of the Employees to appeal same within the time limits allowed under Article V, they are precluded from refiling the same claim. Awards 16265, 16010, 14829, 12851.

Since the Employees took no action within sixty days following the Superintendent's disallowance of the entire claim on November 25, 1964, we find that the claim is barred and must be dismissed.

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 be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.