



Award No. 16920

Docket No. TE-16225

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, New Haven and Hartford Railroad, that:

1. Carrier violated the Agreement when \$43.28 was deducted from the pay checks of Mr. P. J. Fiorella, covering the payroll periods ending December 3 and 12, 1964, representing the difference between straight time and overtime, claimed and properly paid for time worked on the sixth and seventh days of his work week on Friday, July 31; Saturday, August 1; Friday, September 4, and Saturday, September 5, 1964.

2. Carrier violated the Agreement by allowing a period of over 60 days to elapse before making the improper payroll deductions described in Claim No. 1, and lost its right to recovery even if claimant had been overpaid. Carrier further violated the Agreement by allowing a period of over 60 days to elapse before denying the claim made to its Superintendent.

3. Carrier shall return the amount of \$43.28 to Mr. F. J. Fiorella as a result of the violations listed in Claim Nos. 1 and 2.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the New York, New Haven and Hartford Railroad Company and this Union (formerly The Order of Railroad Telegraphers), dated September 1, 1949 as amended and supplemented is available to your Board and by this reference is made a part hereof.

These claims were presented and progressed by the Employees in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. However, Carrier's responses in two instances were not in accordance with the time limits provided by the Agreement. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

The days in question were regularly assigned work days of the second trick position to which Mr. Fiorella had been diverted.

During a routine audit of payroll time returns the Carrier's accounting officials discovered the overpayment. Under date of December 3, 1964, order was issued for deduction of the \$43.28 overpayment, representing the difference between straight and punitive rate for the days involved, such adjustment being effected on the payroll week endings December 5 and 12, 1964.

Claim was submitted on Mr. Fiorella's behalf contending that the deduction of the overpayment made was in violation of the time limit provisions of the August 31, 1954 Agreement inasmuch as the deduction was made more than sixty days after payment.

No claim was presented or handled during any stage of the processing of the grievance on the property that:

- (a) Mr. Fiorella was entitled under the rules to the overtime which was claimed, or
- (b) that the Carrier's superintendent had violated the time limit rule by allegedly allowing more than sixty days to elapse before denying the claim.

The one and only issue presented in the claim submitted, progressed and handled on the property under the Railway Labor Act was that the carrier allegedly violated the Agreement by recovering the overpayment made outside of a sixty day period from the time of the original payment.

Attached in exhibit form is the following pertinent correspondence:

EXHIBIT A - District Chairman Ellis' claim of December 17, 1964

EXHIBIT B - Superintendent MacLeod's decision of March 1, 1965

EXHIBIT C - General Chairman Kelleher's appeal to the undersigned dated March 25, 1965

EXHIBIT D - Decision of the undersigned to Mr. Kelleher dated May 12, 1965

Copy of Agreement between the parties dated September 1, 1949, as amended, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves a claim by the Employees that deduction of \$43.28 from the earnings of Claimant P. J. Fiorella was improper because (1) the original payment was correct; (2) the deduction was prohibited by the Agreement because it was made more than sixty days after Claimant received the original payment; and, (3) in any event Carrier defaulted under the applicable Time Limit Rule by not declining the claim within sixty days of its submission to the Superintendent.

The Employees, in their submission to the Board concede that the propriety of the payment made and later deducted is not an issue before the Board. Therefore, we make no decision with respect thereto.

Carrier objects to the Employees' contention that it defaulted on the claim because no such argument or contention was made during handling on the property.

In accordance with a well established line of precedent awards on this precise point we must sustain the Carrier's objection. See Decisions Nos. 5, 17, 22, 23, National Disputes Committee. The record contains no evidence that the issue was raised during handling on the property.

This leaves as the sole question for decision the Employees' contention that the deduction in question was prohibited by the Time Limit Rule because it was not made within sixty days. This particular question has been decided a number of times by this Board. Our awards clearly hold that the rule is not applicable to this kind of an action by a Carrier. See, for example, Awards 9117, 9581, 15067.

We must, therefore, agree with the Carrier's request to 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 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 not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.