



Award Number 17291
Docket Number CL-17891

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Louis Yagoda, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6473) that:

- (a) The Southern Pacific Company violated the current Agreement between the parties when it failed to deny claim made by employe J. G. Brown within the time limit prescribed in Article V Section 1(a) of the Chicago Agreement, August 21, 1954; and,
- (b) The Southern Pacific Company shall now be required to allow the claim as presented in accordance with the mandatory requirement of Article V Section 1(a) of the August 21, 1954 Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

Mr. J. G. Brown, hereinafter referred to as the Claimant, filed time card claims, Exhibit A and B, for eight (8) hours' additional compensation May 11, 12, 13, 14, 15, 18, 19, 20, 21 and 22, 1966, account alleged violations of Rules 20, 26 and 33 of the Agreement.

On July 19, 1966, Claimant wrote the following letter to Mr. B. M. Lavelle, Division Chairman:

"Attached are copies of time cards sent in as claims which I believe are clearly stated.

To date I have not received any information from the time-keeping bureau. No decline—no acceptance.

Will you kindly follow through and determine reason for non-reply or non-payment."

8. By letter dated October 6, 1966 (Carrier's Exhibit "H"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel.

9. Applicable time limit provisions governing handling of the claim at the highest level on the property were extended by Agreement of the parties hereto and Carrier's Assistant Manager of Personnel denied the instant claim by letter dated February 27, 1968 (Carrier's Exhibit "I"), stating:

"As stated to you in conference, the claimant was awarded position involved on Assignment Notice issued May 16, 1966, and placed thereon as soon as practicable on May 25, 1966, as provided in Rule 33(e), which handling did not contravene any provision of the Clerks' Agreement.

"Contrary to your assertion, the record indicates the Superintendent's letter to the claimant of June 28, 1966, included reasons for denial. Additionally, said letter of declination was discussed in conference between the Division Chairman and the Superintendent's representative on August 11, 1966. A copy of the letter of June 28, 1966 was furnished to the Division Chairman in the Superintendent's letter of August 12, 1966, wherein the latter affirmed his decision on the basis of his letter of June 28, 1968. Such handling fully complied with Article V of Agreement of August 21, 1954.

"In view of the above the claim is not supported by Rule 20, 26, 33 or any other provision of the Clerks' Agreement or by Article V of Agreement of August 21, 1954 and is denied."

The first paragraph of Carrier's letter, quoted immediately above, inadvertently referred to claimant being awarded Position 59(T) and placed thereon May 25, 1966. The record should correctly show that Guaranteed Extra Board employee L. D. Stanley was awarded said position and placed thereon May 24, 1966. Also, part of the record refers to Position No. 11 as Train Clerk; however, the correct title is Report Clerk.

(Exhibits not reproduced)

OPINION OF BOARD: Article V, Section 1(a) of the Agreement reads as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee 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 sixty days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The record shows the following sequence of events in the circumstances which constitute the subject of this dispute.

1. It is undisputed that on May 25, 1966, there was received in Carrier's Division Superintendent's office at Sacramento, California a claim submitted by Report Clerk J. G. Brown on his semi-monthly time card, as follows:

"I claim:—L. D. Stanley—guaranteed extra employee—was awarded Pos. #59T on vacancy notice #10—5-16-66. Mr. Stanley was kept on guaranteed extra board after award date thereby preventing me—a senior qualified regular employee from exercising my seniority. Rules 20-26-33."

2. Carrier has submitted as an exhibit in the record, a copy of a memorandum dated San Francisco, June 28, 1966 and bearing as addressee the Claimant employe at Roseville, California and on which is imprinted a stamp "1966 Jul. 5 am 7 32". The latter stamp is declared by Carrier to show that this copy was received in its Sacramento Division on the date and at the time shown.

This memorandum states:

"No basis for claim. Clerk was held to protect vacation vacancy May 11 thru 22, 1966 of Pos. #11 in accordance with Rule 33 (sec E) of Clerks' Agreement."

Claimant denies having received said memorandum.

3. On July 19, 1966, fifty-five days after date of the original claim, Mr. Brown wrote to his Organization's Division Chairman, enclosing photocopies of time cards covering dates of claims, stating that he had received no reply to his claim from the Carrier and asking the Chairman to "follow through and determine reason for non-reply or non-payment."

4. Under date of July 27, 1966, sixty-one days after the date of the original claim, the Organization's Division Chairman wrote to Carrier's Superintendent as follows:

"We have before us photostatic copy of time cards of claims presented by employe J. G. Brown, Roseville Yard Office for May 11 through 15 and May 18 through 22, 1966 on Position Train Clerk No. 11.

"In view of the fact that the sixty (60) days have expired since claims were filed and no declination has been received by the claimant, we request that claims be paid as filed.

"Kindly acknowledge receipt hereof, make necessary investigation, and advise if claims will be allowed. If it is your intention to deny the justifiable claim, kindly set a definite date and time for conference."

5. Under date of August 12, 1966, eighty-five days after date of original claim, Carrier's Superintendent replied as follows:

"Referring to Decision Chairman, B. of R. C., B. M. Lavelle's letter of July 27, 1966, concerning claim presented by employee J. G. Brown, Roseville Yard Office for May 11 through 15 and May 18 through 22, 1966, Train Clerk Position #11.

"Attached is copy of declination notice addressed to Mr. J. G. Brown, Train Clerk, Roseville, dated June 28, 1966.

"In view of the attached declination notice there is no basis for the claim to be allowed under the time limitation of the Clerks' Agreement and it is therefore denied.

"This claim was discussed with you in conference on August 11, 1966, at which time no additional facts were presented that would alter my opinion in the case; therefore my denial is affirmed.

"Please acknowledge receipt on attached copy of this letter."

The form in which this dispute has reached this Board precludes our evaluation of and decision on the merits of the original substantive claim,— i.e. whether the subject employe was denied his seniority rights in violation of Rules 20, 26 and 33 of the Agreement for 10 days in May 1966 and is consequently entitled as remedy therefor to eight hours' additional compensation for each of these days.

Claimant relies entirely on its contention that Carrier has forfeited its right to contest that claim by failing to act within the prescribed time limit of Article V, Section 1(a) and is therefore bound by the requirement therein that under such lapse the claim must be allowed as presented.

Carrier, although arguing incidentally in its submission, against the merits of Claimant's original claim (Carrier contending that it acted within the permissible 15 calendar days in assigning the Claimant and that, in any event, no deprivation resulted), responds primarily to the procedural question of waiver raised by the Claimant. On this, its position is that its denial of claim was addressed to Claimant on June 28, 1966, well within 60 days from date of receipt of the claim and mailed on the same date to the known address of the Claimant employee in the same manner and by the same means by which it has responded to various claims over a period of 65 years.

Under these circumstances, the claim must be sustained or denied on the single question of whether forfeit against the Carrier exists because of failure to act within the time limits imposed by Article V, Section 1(a).

The controlling Agreement proviso puts a duty on the Carrier to "notify" the claimant or grievant of disallowance within the given time period as an alternative to mandatory allowance of claim.

We do not find in the record, sufficient evidence that Carrier complied with its obligation to notify the Claimant of reasons for disallowance within 60 days from the date the claim was filed. The display of a copy of such alleged disallowance, timely dated and stamped as timely received by Carrier's supervisory personnel, is not sufficient proof of timely mailing of notice to Claimant. (Awards 10173 and 10742).

We find therefore that Carrier has not met its burden of proving timely notification and Claimant must therefore be sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1969.