

Award No. 18137
Docket No. SG-18296

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

(a) Carrier violated Article 1, Section 4, of the agreement of February 7, 1965, when it failed and/or refused to properly notify the employees of the Signal Department, New York Division, that operation was suspended and positions were abolished effective at regular starting time Monday, July 17, 1967.

(b) Each and every one of the Signal Department employees adversely affected by an alleged strike on July 17, 1967, be paid eight (8) hours at the straight-time rate of their respective positions for July 17, 1967, account of violation cited in the claim (a) above.

Several employees who were adversely affected are named; this claim, as stated above, is for each and every one of the Signal Department employees that were affected:

E. J. Fisher - Ldg. Sig. Mtr.	Notified 9:35 P. M.	7/16/67
W. Donald Wilson - Ldg. Sig. Mtr.	Notified 9:15 P. M.	7/16/67
M. R. Rickie - Sig. Mtr.	Not Notified - Reported for work	
F. G. Abbey - Signalman	Not Notified - Reported for work	
R. H. Watkins - Signalman	Notified 10:15 P. M.	7/16/67
L. Stoffels - Signalman	Notified 10:20 P. M.	7/16/67
J. J. Phelan - Signalman	Notified 10:30 P. M.	7/16/67
J. J. Mewhinney - Signalman	Notified 10:30 P. M.	7/16/67
W. A. Buchanan - Signalman	Not Notified - Reported for work	
D. G. Earl - Signalman	Notified 10:30 P. M.	7/16/67
M. Timzen - Sig. Mtr.	Notified 10:30 P. M.	7/16/67
O. Spiecker, Jr. - Signalman	Not Notified - Reported for work	
W. R. Dinger - Sig. Mtr.	Notified 9:45 P. M.	7/16/67
K. A. Crawford - Asst. Sig. Mtr.	Notified 9:35 P. M.	7/16/67
A. Longo - Asst. Signalman	Not Notified - Reported for work	
D. A. Dawson - Sig. Helper	Not Notified - Reported for work	
J. R. Lill - Sig. Helper		
R. Storms - Sig. Helper	Notified 9:30 P. M.	7/16/67

(c) Carrier violated Article V of the August 21, 1954 Agreement, and should now be required to allow the claim as presented, account Local Chairman's claim of August 30, 1967 not being timely denied. (Carrier's File: 155-Signalmen.)

EMPLOYEES' STATEMENT OF FACTS: Due to a strike by Shop Craft Employees, Carrier abolished signal employees' positions effective at their regular starting time on Monday, July 17, 1967.

Under date of August 30, 1967, the Brotherhood's Local Chairman presented to Carrier's Signal Supervisor, Mr. P. M. Miller, the claim that is covered by paragraphs (a) and (b) of the Statement of Claim quoted above. That claim was filed on the basis the employees were not properly notified of the abolition of their positions, in violation of Section 4 of Article I of the February 7, 1965 Agreement.

On November 11, 1967, the Local Chairman notified Mr. Miller the claim is now payable by default because Carrier failed to render a decision within the time limit provisions of Article V of the August 21, 1954 Agreement. The Local Chairman's contention in this respect is the basis for paragraph (c) of our Statement of Claim.

The claim was subsequently handled to a conclusion on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibits Nos. 1 through 12.

There is an agreement in effect between the parties to this dispute, bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute. The National Agreements dated August 21, 1954 and February 7, 1965, are also by reference made a part of this record.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On July 15, 1967, the Shop Crafts System Federation advised that the Erie Lackawanna Railway Company was not one of the railroads selected for the strike called for July 17, 1967, at 12:01 A.M. However, on Sunday, July 16, 1967, at approximately 4:00 P.M., Carrier was notified by the System Federation that the Erie Lackawanna was to be included. On learning this, the general chairmen of the various crafts were contacted as soon as possible to determine if their members would honor picket lines established by the striking shop craft employees. The General Chairman of the Petitioning Organization could not be located; however, all of the other general chairmen contacted advised that their employees were duty bound to do so. Based thereon, Carrier was forced to promptly personally notify all employees it could that because of the emergency, positions were annulled effective July 17, 1967.

Picket lines were established by Shop Craft employees system-wide.

Claim was instituted by the Local Chairman on August 30, 1967 (Carrier Exhibit A), and denied under letter dated October 16, 1967 (Carrier Exhibit B). The Local Chairman, under dates of November 11, 1967 and

November 25, 1967 (Carrier Exhibits C and D), wrote Carrier alleging that claim had not been timely denied. This allegation was denied by Carrier under date of December 11, 1967 (Carrier Exhibit E). Claim was thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters (Carrier Exhibits F, G, H, I and J), where it was denied (Carrier Exhibit K). The General Chairman, under date of May 7, 1968 (Carrier Exhibit L), requested a time-limit extension until this claim could be discussed in conference, which was granted (Carrier Exhibit M). Claim was thereafter discussed in conference on June 6, 1968, and denied with denial confirmed on June 21, 1968 (Carrier Exhibit N).

(Exhibits not reproduced.)

OPINION OF BOARD: In the Organization's ex parte submission to this Board, Section 4 of Article I of the February 7, 1965 Agreement was cited and the Organization went on to state:

"The foregoing is quoted as a matter of information. The question of whether or not Section 4 of Article I of the February 7, 1965 Agreement was violated will be presented to the Disputes Committee established under Article VII of that Agreement. The question before this tribunal is whether or not Carrier violated the provisions of Article V of the August 21, 1954 Agreement, and if so, is Carrier required to allow the claim as presented."

Carrier, in its ex parte submission, agreed with the Organization that the only claim before this Board is that Carrier allegedly violated the time limit on claims rule, Article V of the August 21, 1954 Agreement.

Therefore, the sole issue to be determined is whether or not Carrier denied the claim within the time limit provisions of said Article V of the August 21, 1954 Agreement governing the parties to this dispute.

On August 30, 1967, the Organization's Local Chairman, W. Donald Wilson, by letter filed this claim on the basis that the employees were not properly notified of the abolition of their positions in violation of Section 1 of Article I of the February 7, 1965 Agreement when their positions were abolished effective July 17, 1967 due to a strike by Shop Craft employees. On November 11, 1967, Local Chairman Wilson by letter notified Carrier's Signal Supervisor, P. M. Miller, that the claim should not be allowed in its entirety due to his failure to notify him of Miller's decision regarding the August 30, 1967 claim within the prescribed limits of Article V of the August 21, 1954 Agreement. The Organization further contends that to date, the Carrier's Signal Supervisor has not notified the Local Chairman in writing of the reasons his claim was disallowed.

Carrier's position is that Carrier did deny the claim when a copy of a letter dated October 16, 1967 from Carrier's said Supervisor Miller to Local Chairman William A. Radziewicz in regard to similar claims was sent to Local Chairman Wilson; that the August 21, 1954 Agreement does not specify the manner in which a claim should be denied; that if this Board finds that Carrier's letter of October 16, 1967 was a proper denial, then the Organization defaulted by not appealing said decision within the 60 day time limit provisions of Article V of the August 21, 1954 Agreement and thus should be dismissed; that the claim has been expanded to include "each and every

one of the Signal Department Employees", in violation of Section 3, First (i) of the Railway Labor Act and Circular No. 1 of this Board.

The question for us to determine is whether or not the letter of Carrier's Signal Supervisor Miller, addressed to Local Charman Radziewicz, with copy of said letter to Local Chairman W. Donald Wilson, is a proper denial within the intent and meaning of applicable provisions of Article V of the August 21, 1954 Agreement.

Said letter reads as follows:

"October 16, 1967

Mr. William A. Radziewicz
Local Chairman, Lodge No. 68
Brotherhood of Railroad Signalmen
43 Wilson Place
Belleville, New Jersey

Dear Mr. Radziewicz:

Reference to your letter of September 5, 1967, presenting claim for employees of the Signal Department that the Company violated Article 1, Section 4, of the Agreement of February 7, 1965 when it failed and/or refused to properly notify the employees of the Signal Department, New York Division, that operation was suspended and positions were abolished effective at regular starting time Monday, July 17, 1967.

Claim is without merit, as positions were properly abolished account emergency conditions caused by strike and that claimants were not available for service. There has been no violation in this case of any rules cited, and claim is denied.

Very truly yours,

/s/ P. M. Miller
Signal Supervisor

cc: Mr. W. Donald Wilson:
Re yours of 8-30-67"

The Organization in its rebuttal submission to this Board for the first time raises the question of Chairman Wilson actually receiving copy of said letter to Chairman Radziewicz. It is a well established principle of this Board that charges or contentions not raised on the property cannot be considered by this Board in the determination of a dispute. Further, the Organization did not at any time on the property contend that Local Chairman Wilson failed to receive a copy of the Carrier's letter to Local Chairman Radziewicz.

We feel that the copy of Carrier Miller's letter addressed to Local Chairman Radziewicz forwarded to Local Chairman Wilson complied with the requirements of Article V, Section 1(a) of the August 21, 1954 Agreement in regard to declinations of claims. While we do not approve of said method as a model to be followed, we feel that reasons given in denying the claim filed by Mr. Radziewicz clearly applied to the claims filed by Mr. Wilson and this is seen in the letter of October 16, 1967:

"cc: Mr. W. Donald Wilson: Re yours of 8-30-67."

Finding Carrier complying with the denial provisions of Article V of the August 21, 1954 Agreement, we are compelled to deny this 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.