Award No. 18640
Docket No. CL-18820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6778) that:

(a) Carrier violated and continues to violate the Agreement between the parties effective May 1, 1955, as revised, when it removes the work of handling freight known as Trucking-In-Lieu-of Lighterage from the scope and operation of the Clerks' Agreement and the employes covered thereby and assigns it to, and/or permits it to be performed by "Spencer" employes who have no seniority, or other rights thereto, under the Clerks' Agreement; and,

(b) Carrier further violated the Agreement when it failed and refused to abide by the agreed upon settlement reached at conference with Carrier's authorized agent, Superintendent of Stations, Mr. R. A. Grover, on July 28, 1967; and,

(c) Carrier shall be required to restore the work of handling Trucking-In-Lieu-of-Lighterage freight to employes under the scope and operation of the Clerks' Agreement; and,

(d) Carrier shall also be required to pay eight (8) hours pay per day to each; C. Rhodes, C. Goode, D. McMorrow, W. Jones and J. Dunn, their successor or successors, each day commencing December 3, 1966, and continuing each day thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement as revised May 1, 1955, and subsequent thereto referred to as the Agreement between the parties, the Lehigh Valley Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, which Agreement is on file with the Board and by reference thereto is made a part of this statement of facts.

There is also an Agreement reached in conference on July 28, 1967, which was reduced to writing by the General Chairman, as requested, which is attached hereto as Employes Exhibit No. 1.

of all cases as stipulated and the two above mentioned cases were no longer outstanding and unadjusted claims after the letter of June 16, 1969.

Carrier's Exhibit "S" — Letter September 23, 1969, from General Chairman Baier to Director Labor Relations Midgley pursued the attempts of the Employes to establish support for their position and consideration for their position after the highest officer on the property designated to handle such matters had rendered his decision.

Carrier's Exhibit "T" — Letter October 15, 1969, from Director Labor Relations M. W. Midgley to General Chairman Baier refuting the content of Carrier's Exhibit "S."

Carrier's Exhibit "U" — Letter November 17, 1969, from General Chairman Baier to Director Labor Relations including a number of statements made to attempt to enhance Employes' position after decision had been rendered.

Carrier's Exhibit "V" — Letter December 16, 1969, we submit, refuted Employes attempt to bolster their position as set forth in Exhibit "U."

Carrier's Exhibit "W" — Letter December 29, 1969, from General Chairman Baier to Director Labor Relations Midgley merely refers to previous correspondence as presenting the "true facts" in this case.

Carrier categorically states the "true" facts referred to by Employes should include all the facts which Carrier has supplied in its presentation.

Carrier's Exhibit "X" — Consists of letter June 3, 1966, File Case C-66-33, from Chief of Personnel to General Chairman, BRAClerks.

This letter clearly indicates the Organization, at a conference June 1, 1966, withdrew C-66-33, Violation of Agreement — L. Mauro Trucking Co., Newark, N. J. and the file was closed.

This, in addition to letter agreement June 19, 1969, eliminates Case C-66-33 from any consideration in this case.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier moves for dismissal of the claim on the grounds that there were fatal procedural defects in handling the claim on the property which effectively bar consideration of the substantive issue by this Board. It is contended that the claim failed to include the names of the claimants, the dates of alleged violations, and the filing of the claim at the first step of appeal rather than with the officer of the Carrier authorized to receive a claim in the first instance, all of which violate the express terms of Rule 33.

The Rule reads in pertinent part:

"(a) All claims and grievances must be presented in writing by or on behalf of the employes involved, to the officer of the Carrier authorized to receive same within sixty (60) days from the date of occurrence on which the claim is based."

The Employes state that the claim was handled in the usual and proper manner, except for a remand for further discussion following appeal to the highest officer. The record shows that the Employes dropped their contention made during the progress of the claim that the Carrier had violated Rule 33 by its failure to respond to the first appeal within the time limits therein set forth.

We have studied the voluminous record with great care and with particularity the exchange of correspondence, much of its extraneous to the issue before us, and the chronology of the exchange, as such bears on the Carrier's motion to dismiss. We have searched for clear evidence which does or does not support the alleged violation of Rule 33 by the Employes, for we are reluctant to dismiss a claim without reaching the merits of the petitioner's claim for relief.

First, as to the alleged failure to file the claim with the officer authorized to receive it in the first instance. The record shows that the initial communcation to the Carrier was from the General Chairman addressed to the officer designated to handle claims in the first step of appeal. This was in the form of a letter listing a number of items to be placed on a docket scheduled for discussion, including the matter here in dispute. Following the meeting the General Chairman addressed a letter to the same officer outlining his position on the claim before us, among other matters covered.

The presentation of items for discussion with the Superintendent and a subsequent statement by the Employes' representative with respect to the instant claim are of the nature of a joint effort by the parties to resolve outstanding problems between them. We do not find these communications from the General Chairman to be statements of claim but were matters for discussion only. The nature of these items docketed may best be described in the words of the General Chairman with respect to one item, "Unless this work is restored to our Craft, time claims will be submitted." The matter involved here was presented as a request and in such form was not a claim as contemplated by Rule 33. To hold otherwise would serve only to stifle the efforts of the parties to meet in an effort to forestall or obviate the filing of formal claims.

On January 30, 1967, a formal claim was filed by the District Chairman with the Supervisor-Stations by whom the Carrier now argues should have received the claim, but did not. Contrary to that contention the record is clear that this requirement of Rule 33 was met by the Employes within the time limits prescribed. It was rejected by the Supervisor on March 13, 1967 in timely manner and appealed by the General Chairman to the Superintendent on March 25, 1967.

We now look to the alleged failure of the Employes to include in the claim, as filed, the names of the claimants and the dates on which the violation occurred. The claim filed by the District Chairman stated, in part, "Claim is being submitted for any and all employes affected due to this violation, from December 3, 1966, up to and including such time as this violation is corrected. Employes affected can be determined by a check of the payroll at Pier 46, N.Y. These claims are in addition to any other claims pending." Clearly, the claim as presented is deficient and does not meet the requirements of Rule 33, which states that the claim "**must**" be presented on behalf of the employes involved. This can only mean that the claimant or claimants must be named and identified. There are no ambiguities in the language of the rule as numerous awards have so held.

In an early case arising after the present language was incorporated in the Agreement (Special Board of Adjustment No. 74, Docket S-15), the Board

stated, in part, "Here a claimant was not named. Carrier denied the claim on that basis. * * * The rule says that all claims must be presented by or on behalf of the employe involved. If presented by the employe himself, obviously he would be named. If presented on behalf of the employe involved the claim must obviously be under circumstances where the injured party is known. It is a claim made by the representative for a named employe. 'By or on behalf of the employe involved' clearly requires that he be named as a claimant."

A later award treated with the same language (Special Board of Adjustment No. 221, Docket 35). In dismissing the claim, Referee Coffey said, "We do not have before us a claim timely filed 'on behalf of the employe involved,' new claimants having been substituted after sixty days 'from the date of the occurrence on which the claim or grievance is based' and Carrier moves to dismiss for material departure between the original and amended claim."

A heavy preponderance of subsequent awards have similarly construed the requirements here before us in Rule 33. To the same effect, many awards have supplemented these findings by ruling that thre is no obligation placed upon the Carrier to ascertain the identity of the claimant by a search of its records, as was urged by the District Chairman in the instant claim. Awards 18044 (Ellis), 16675 (McGovern), 17740 (McCandless), 15391 (Woody), 15759 (Harr), among others. We are aware of and have reviewed contrary awards which have held that a claim is not deficient in failing to name the claimant, where the identity should be known to, or is readily ascertainable by the Carrier. However, we cannot subscribe to this view. This conclusion is not what Rule 33 so clearly states.

As the claim progressed, the record first shows the names of the claimants in what appears to be some minutes written on the letterhead of the Brotherhood covering a meeting held with the Carrier on May 24, 1967. The date of its preparation is not shown, it is not signed by either party, nor is the distribution of copies indicated. It is a unilateral and self-serving document and has no value as evidence. In none of the numerous letters of appeal and re-appeal by the General Chairman to the Superintendent and to the Carrier's highest officer were the claimants identified prior to the Carrier's final denial.

In his letter denying the claim, dated December 11, 1967, the highest officer called specific attention to this deficiency stating, "There has been no naming of the claimant or date of claim as required by rule and in such circumstances no consideration by the Carrier attaches itself to your claim." The first response to this declination followed in a letter dated September 23, 1969 from the General Chairman in which he said that he had given the names of the claimants to various representatives of the Carrier in meetings held May 24, 1967 and on July 28, 1967. Even if such be factual, and it is without proof, Rule 33 was not met for it requires that such information be part of the initial claim and be in writing.

In this same letter he added, "The only purpose in answering your letter dated December 11, 1967, is due to the policy and/or ruling of the Third Division that any and all facts pertinent to a submission be handled on the property prior to being submitted to the Board. In our discussions we have discussed the claimants and this letter is for the record."

This comes too late. As found in Award 13235 (Dorsey), "To hold otherwise would destroy the appeals procedure on the property, in that amending

the claim in successive steps of the procedure, the claim develops into a new and different claim which was not presented 'to the officer of the Carrier authorized to receive same;' and therefore, could not be considered on the property in the 'usual manner up to and including chief operating officer.' We are of the further opinion that Section 3 First (i) of the Act contemplates that the claim denied by the chief operating officer on the property, is the claim 'may be referred to the Board'."

The Claim is dismissed on procedural grounds as set forth in the Opinion.

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 Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1971.

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